

By Lightman  
Mauzy

S.B. No. 287

A BILL TO BE ENTITLED  
AN ACT

relating to the licensing of persons who fit and dispense hearing aids; relating to the creation, organization, powers, duties, and procedures of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids; providing for certain prohibited acts; providing for penalties; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. DEFINITIONS. (a) In this Act, unless the context requires a different definition:

(1) "Board" means the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

(2) "License" means license issued by the board under this Act to persons authorized to practice fitting and dispensing hearing aids.

(3) "Temporary license" means a license issued by the board to persons authorized to practice fitting and dispensing hearing aids only under the employ and personal supervision of a person who holds a license under this Act.

(4) "Hearing aid" means any instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing, and any parts of such an instrument or device except batteries.

(5) "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract.

(b) "The practice of fitting and dispensing hearing aids" is defined as the employment of objective or subjective means, without the use of drugs, for the purpose of ascertaining and measuring the powers and/or range of human hearing, and fitting and adapting of hearing aids to correct or remedy any defect or abnormal condition of hearing and the consequent selection or adaption or sale of hearing aids intended to compensate for hearing loss.

(c) For the purpose of this Act, the words, "ascertaining and measuring the powers and/or range of human hearing" as employed in this Act, include:

(1) The measuring of human hearing by any means solely for the purpose of making selections, adaptations, or sale of hearing aids.

(2) The measuring of human hearing by any means at the request of a duly licensed physician or surgeon.

(d) For the purpose of this Act, the words, "the fitting and adapting hearing aids" as employed in this Act, shall include:

(1) the making of impressions for earmold to be used as a part of a hearing aid;

1 (2) the adaption or supplying of hearing aids to correct a  
2 hearing loss;

3 (3) the making of repairs, corrections, or alterations  
4 of hearing aids for compensation.

5 Sec. 2. BOARD OF EXAMINERS. (a) The Texas Board of  
6 Examiners in the Fitting and Dispensing of Hearing Aids is hereby  
7 created. The board shall be composed of seven members with the  
8 following qualifications, to-wit:

9 (1) four of such members shall possess the necessary  
10 qualifications to practice fitting and dispensing hearing aids in  
11 this state, and have been residents of this state actually engaged  
12 in the practice of fitting and dispensing hearing aids for at least  
13 five years immediately preceding their appointment and who possess  
14 a certificate of proficiency in the fitting and dispensing of  
15 hearing aids issued by an association or society of hearing aid  
16 fitters and dispensers having branch affiliations in not less  
17 than 10 states, and none of the members shall have a financial  
18 interest in a hearing aid manufacturing company or a wholesale  
19 hearing aid company. No more than two of such four members shall  
20 be employed by, franchised by, or associated exclusively with the  
21 same hearing aid manufacturer;

22 (2) one of such members shall be a citizen of the United  
23 States and a resident of this state for a period of at least two  
24 years immediately preceding his appointment and such member shall  
25 not have a financial interest in a hearing aid manufacturing  
26 company or a wholesale hearing aid company;

27 (3) one of such members shall be a citizen of the United  
28 States and a resident of this state for a period of at least two  
29 years immediately preceding his appointment; and such member shall  
30 be an active practicing physician or surgeon duly licensed to  
31 practice in this state by the Texas State Board of Medical  
32 Examiners, and who specialize in the practice of otolaryngology,  
33 and such member shall not have a financial interest in a hearing  
34 aid manufacturing company or a wholesale hearing aid company.

35 (4) one of such members shall be a citizen of the United  
36 States and a resident of this state for a period of at least two  
37 years immediately preceding his appointment; and such member shall  
38 be an active practicing audiologist; and such member shall not  
39 have a financial interest in a hearing aid manufacturing company  
40 or a wholesale hearing aid company.

41 (b) One who has served two full consecutive terms on the  
42 board shall not be eligible for a reappointment to the board for  
43 a period of 12 months immediately following the expiration of the  
44 second full term.

45 (c) In the event of death, resignation, or removal of any  
46 members, the vacancy of the unexpired term shall be filled by the  
47 governor in the same manner as other appointments. Each appointee  
48 to the board shall, within 15 days from the date of his appoint-  
49 ment, qualify by taking the constitutional oath of office. Upon  
50 presentation of such oath, the secretary of state shall issue  
51 commissions to appointees as evidence of their authority to act  
52 as members of the board.

53 (d) The members of the initial board, to be appointed by the  
54 governor within 90 days after the effective date of this Act, shall  
55 be divided into three classes, to-wit: Class One, Class Two, and

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1 Class Three, and their terms of office shall be determined by lot  
2 at the first meeting of the board. The three Class One members  
3 shall hold office for two years; and the two Class Two members  
4 shall hold office for four years; and the two Class Three members  
5 shall hold office for six years, respectively, from the time of  
6 their appointment. Biennially thereafter the governor shall  
7 appoint two members of the board to hold office for a term of six  
8 years, except for the periods when Class One appointments are made  
9 when the governor shall appoint three members for six-year terms.

10 (e) The board shall be represented by the attorney general  
11 and the district and county attorneys of the state.

12 Sec. 3. BOARD ORGANIZATION AND MEETINGS. Within 60 days  
13 after their appointment and qualification the initial board shall  
14 hold its first meeting and elect a president, vice president,  
15 and secretary-treasurer. The term of office for all officers of  
16 the board shall be for a period of one year. The board shall  
17 hold regular meetings at least twice a year at which an examination  
18 of applicants for license shall be given. Not less than 10 days'  
19 notice of such meeting shall be given by publication in at least  
20 three daily newspapers of general circulation to be selected by  
21 the board. Written notice of such regular meeting of board shall  
22 be given to the members by the secretary-treasurer of the board  
23 by certified mail not less than 10 days prior to the date of such  
24 regular meetings. Special meetings of the board shall be held  
25 upon the written request of a majority of the members or upon  
26 the call of the president. Written notice of such special meetings  
27 of the board shall be given to members by the secretary-treasurer  
28 of the board by certified mail not less than 10 days prior to the  
29 date of such special meetings. A majority of the board shall  
30 constitute a quorum for the transaction of business and should a  
31 quorum not be present on the day appointed for any meeting, those  
32 present may adjourn from day to day until a quorum be present  
33 provided such period shall not be longer than three successive  
34 days.

35 Sec. 4. POWERS AND DUTIES OF THE BOARD. (a) The board  
36 shall have the power to make such rules and regulations not  
37 inconsistent with this Act as may be necessary for the performance  
38 of its duties, the regulations of the practice of fitting and  
39 dispensing hearing aids, the prescribing of a code of ethics for  
40 the practice of fitting and dispensing hearing aids, and the  
41 enforcement of this Act.

42 (b) The board shall have the power to appoint committees  
43 from its own membership, the duties of which shall be to consider  
44 such matters, pertaining to the enforcement of this Act and the  
45 rules and regulations promulgated in accordance therewith, as  
46 shall be referred to said committees, and they shall make recom-  
47 mendations to the board in respect thereto.

48 (c) The board shall have the power to employ the services of  
49 stenographers, inspectors, agents, attorneys, and other necessary  
50 assistants in carrying out the provisions of this Act.

51 (d) The board, any committee, or any member thereof, shall  
52 have the power to issue subpoenas and subpoenas duces tecum to  
53 compel the attendance of witnesses and the production of books,  
54 records, and documents, to administer oaths and to take testimony

1 concerning all matters within its jurisdiction.

2 (e) The board shall have the right to institute an action  
3 in its own name to enjoin the violation of any of the provisions  
4 of this Act. Said action for injunction shall be in addition  
5 to any other action, proceeding or remedy authorized by law.

6 (f) The board is charged with the duty of aiding in the  
7 enforcement of the provisions of this Act, and any member of the  
8 board may present to the attorney general or a county or  
9 district attorney of this state complaints relating to violations  
10 of any provisions of this Act; and the board through the members,  
11 officers, counsel, and agents may assist in the trial of any case  
12 involving alleged violations of this Act, subject to the control  
13 of the attorney general, county attorney, or district attorney  
14 charged with the responsibility of prosecuting such case.

15 (g) Before entering upon the discharge of the duties of the  
16 office, the secretary-treasurer of the board shall give such bond  
17 for the performance of this duty as the board may require, the  
18 premium of such bond is to be paid from any available funds.

19 (h) The board shall adopt an official seal and the form of a  
20 license of suitable design and shall have an office where all the  
21 permanent records shall be kept.

22 Sec. 5. RECORDS. (a) The board shall preserve an accurate  
23 record of all meetings and proceedings of the board.

24 (b) A record shall be kept showing the name, age, and  
25 present legal and mailing address of each applicant for examination  
26 together with such information as the board may desire to record.  
27 The record shall also show whether applicants were rejected or  
28 licensed and shall be prima facie evidence of all matters therein  
29 contained.

30 (c) The secretary-treasurer of the board shall on or before  
31 March 1st of each year send a certified copy of such record to the  
32 secretary of state for permanent record. A certified copy of said  
33 record with the hand and seal of the secretary-treasurer of the  
34 board to the secretary of state, shall be admitted as evidence in  
35 all courts.

36 (d) The board shall keep a record of each license issued  
37 under this Act containing the name, residence, place of business  
38 of the person to whom each license has been issued, and the date  
39 of issuance of each of such license, and all information  
40 pertaining to renewals, revocations, and suspensions of such  
41 licensee.

42 Sec. 6. EXAMINATION; APPLICATION. (a) Every person  
43 desiring to practice fitting and dispensing hearing aids in the  
44 State of Texas shall be required to pass an examination given by  
45 the Texas Board of Examiners in the Fitting and Dispensing of  
46 Hearing Aids.

47 (b) The applicant shall make application, furnishing to  
48 the secretary-treasurer of the board, on forms to be furnished by  
49 the board, satisfactory sworn evidence that he has attained the  
50 age of 21 years, is of good moral character, is a citizen of the  
51 United States, is free of contagious or infectious disease, and  
52 has at least graduated from a first-grade high school or has a  
53 preliminary education equivalent to permit him to matriculate in  
54 The University of Texas, and such other information as the board  
55 may deem necessary for the enforcement of this Act.

1 (c) The examination shall consist of written, oral, or  
2 practical tests in the following areas as they pertain to fitting  
3 and dispensing hearing aids, to-wit:

- 4 (1) basic physics of sound;  
5 (2) the structure and function of hearing aids;  
6 (3) the fitting of hearing aids;  
7 (4) pure tone audiometry, including air conduction testing  
8 and bone conduction testing;  
9 (5) live voice and/or record voice speech audiometry;  
10 (6) effective masking;  
11 (7) recording and evaluation of audiograms and speech  
12 audiometry to determine the hearing aid candidacy;  
13 (8) selection and adaption of hearing aids and testing of  
14 hearing aids;  
15 (9) taking of earmold impressions;  
16 (10) Such other subjects, areas, and/or skills as may be  
17 determined by the board to be essential to a person practicing the  
18 fitting and dispensing of hearing aids.

19 (d) No part of the examination shall consist of tests  
20 requiring knowledge of the diagnosis and/or treatment of any  
21 disease or injury of the human body.

22 (e) Each applicant shall be given due notice of the date and  
23 place of the examination and the subjects, areas, and/or skills  
24 that will be included within such examination. All examinations  
25 shall be conducted in writing and by such other means as the board  
26 shall determine adequate to ascertain the qualifications of  
27 applicants. All applicants examined at the same time shall be  
28 given the same written examination. Every applicant successfully  
29 passing the examination and meeting all requirements of the board  
30 shall be registered by the board as possessing the qualifications  
31 required by this Act and shall receive from the board a license  
32 to practice fitting and dispensing hearing aids in this state.

33 Sec. 7. LICENSE WITHOUT EXAMINATION. Within 120 days after  
34 the effective date of this Act, and not thereafter, any person  
35 engaged in the practice of fitting and dispensing hearing aids on  
36 the effective date of this Act shall be registered by the board as  
37 passing the qualifications of this Act and shall receive from the  
38 board a license to practice fitting and dispensing hearing aids in  
39 this state without taking the examination provided for in this Act  
40 upon presentation, in writing, by such person to the secretary-  
41 treasurer of the board on forms to be furnished by the board,  
42 satisfactory sworn evidence that such person has attained the age  
43 of 21 years of age, is of good moral character, is a citizen of  
44 the United States, is free of contagious or infectious diseases,  
45 and has been engaged in the practice of fitting and dispensing  
46 hearing aids in this state for a period of at least two years  
47 immediately prior to the effective date of this Act.

48 Sec. 8. RECIPROCAL ARRANGEMENTS. (a) The Texas Board of  
49 Examiners in Fitting and Dispensing of Hearing Aids may, in the  
50 discretion of the board in each instance, grant a license to  
51 practice fitting and dispensing of hearing aids without requiring  
52 an examination to licentiates of other states or territories having  
53 requirements equivalent to or higher than those in effect pursuant  
54 to this Act for the practice of fitting and dispensing hearing  
55 aids.

1 (b) Applications for license under the provisions of this  
2 section shall be in writing and upon a form prescribed by the  
3 board. Such applications shall be filed with the secretary-  
4 treasurer of the board. The application shall be accompanied by  
5 a license or a certified copy of a license to practice fitting  
6 and dispensing of hearing aids, lawfully issued to the applicant  
7 by some other state or territory; and shall also be accompanied by  
8 an affidavit of the president or secretary of the Board of  
9 Examiners in Fitting and Dispensing Hearing Aids who issued the  
10 license. The affidavit shall recite that the accompanying  
11 certificate or license has not been cancelled or revoked, and that  
12 the statement of qualifications made in this application for  
13 license in Texas is true and correct.

14 (c) Applicants for a license under the provisions of this  
15 section shall subscribe to an oath in writing which shall be a part  
16 of said application, stating that the license, certificate, or  
17 authority under which the applicant practices fitting and dispens-  
18 ing hearing aids in the state or territory from which the applicant  
19 removed, was at the time of such removal in full force and not  
20 suspended or cancelled; that the applicant is the identical person  
21 to whom the said certificate or license was issued, and that no  
22 proceeding was pending at the time of such removal, or at the  
23 present time pending against the applicant for the cancellation,  
24 suspension, or revocation of such certificate or license in the  
25 state or territory in which the same was issued and that no  
26 prosecution was then or at the time of application, pending against  
27 the applicant in any state or federal court for any offense under  
28 the laws of Texas which is a felony.

29 Sec. 9. TEMPORARY TRAINING PERMIT. (a) The board shall  
30 grant a temporary training permit to practice fitting and dispens-  
31 ing hearing aids to any person applying to the board who has never  
32 taken the examination provided in the Act and who possesses the  
33 qualifications in Subsection (b), Section 6, of this Act, upon  
34 written application to the secretary-treasurer of the board. The  
35 applicant shall make applications on forms to be furnished by the  
36 board furnishing satisfactory sworn evidence that he possesses the  
37 qualifications contained in Subsection (b), Section 6, of this Act,  
38 that he has never taken the examination provided in the Act, and  
39 that he has never previously been issued a temporary training  
40 permit to practice fitting and dispensing hearing aids by the  
41 board, and such other information that the board determines  
42 necessary for the proper enforcement of this Act.

43 (b) The application for a temporary permit shall be accom-  
44 panied by the affidavit of a person duly licensed and qualified to  
45 practice fitting and dispensing hearing aids in this state. The  
46 accompanying affidavit shall state that the applicant, if granted  
47 a temporary training permit, will be employed by the affiant,  
48 that the affiant will maintain personal supervision of all work  
49 done by applicant under such temporary license; that affiant will  
50 notify the board within 10 days following applicant's terminating  
51 of employment with affiant, and such other information as the  
52 board may determine necessary for the proper enforcement of this  
53 Act.  
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1 (c) A temporary training permit shall authorize the holder  
2 thereof, to practice fitting and dispensing hearing aids for a  
3 period of 16 months or until the holder thereof shall have success-  
4 fully passed the examination required for a license under this Act,  
5 whichever event occurs first.

6 (d) A temporary training permit shall never be extended  
7 or renewed, and the same shall automatically become void at the end  
8 of the period of 16 months from the date of issuance. No person  
9 shall ever be issued more than two temporary training permits.

10 Sec. 10. REFUSAL TO LICENSE AND REVOCATION OR SUSPENSION  
11 OF LICENSE-GROUNDS. The board may, in its discretion, refuse to  
12 issue a license to any applicant and may cancel, revoke, or suspend  
13 the operation of any license by its granted powers for any of the  
14 following reasons:

15 (1) The applicant or licensee is guilty of gross immorality.

16 (2) The applicant or licensee is unfit or incompetent by  
17 reason of negligence.

18 (3) The applicant or licensee is guilty of any fraud,  
19 deceit, or misrepresentation in the practice of fitting and dis-  
20 pensing hearing aids or in his seeking admission to such practice.

21 (4) The applicant or licensee has been convicted of a felony  
22 or a misdemeanor which involved moral turpitude.

23 (5) The applicant or licensee is an habitual drunkard or is  
24 addicted to the use of morphine, cocaine, or other drugs having  
25 similar effect or had become insane or has been adjudged by a court  
26 of competent jurisdiction to be of unsound mind.

27 (6) The applicant or licensee has violated any of the  
28 provisions of this Act.

29 (7) The licensee has directly or indirectly employed, hired,  
30 procured, or induced a person, not licensed to practice fitting and  
31 dispensing hearing aids in this state, to so practice.

32 (8) The licensee directly or indirectly aids or abets in the  
33 practice of fitting and dispensing hearing aids any person not duly  
34 licensed to practice under this Act.

35 (9) The licensee lends, leases, rents, or in any other  
36 manner places his license at the disposal or in the service of any  
37 person not licensed to practice fitting and dispensing hearing aids  
38 in this state.

39 (10) The licensee used or caused or promoted the use of any  
40 advertising matter, promotional literature, guarantees, warranty,  
41 label, brand, insignia, or any other representation however dis-  
42 seminated or published with misleading, deceiving, improbable, or  
43 false information.

44 (11) The licensee advertised a particular model, type, or  
45 kind of hearing aid for sale when purchasers or prospective  
46 purchasers responding to the advertisement cannot purchase or are  
47 dissuaded from purchasing the advertised model, type, or kind when  
48 it is established that the purpose of the advertisement is to  
49 obtain prospects for the sale of a different model, type, or kind  
50 than was advertised.

51 (12) The licensee represented that the service or advice of a  
52 person licensed to practice medicine by the Texas State Board of  
53 Medical Examiners is used or made available in the selection,  
54 fitting, adjustment, maintenance, or repair of hearing aids when  
55 such representation was not true.

1 (13) The licensee used the term "doctor," "clinic," or any  
2 like words, abbreviations, or symbols in the conduct of his  
3 practice which would tend to connote that the licensee was a  
4 physician or surgeon.

5 (14) The licensee conducted his business under any name that  
6 is connotative of affiliation with or approval by the United States  
7 Government, the State of Texas, or any department, agency, or  
8 political subdivision thereof.

9 (15) The licensee defamed another licensee under this Act  
10 by falsely imputing to him dishonorable conduct, inability to  
11 perform contracts, questionable credit standing, or any other  
12 false representation or falsely disparaging the products of such  
13 other licensee in any respect, or the business methods, selling  
14 prices, values, credit terms, policies, or services of such other  
15 licensee.

16 (16) The licensee displayed competitive products in his place  
17 of business, or in the advertising in such manner as to falsely  
18 disparage them.

19 (17) The licensee quoted prices of competitive hearing aids  
20 or devices without disclosing that the prices were not the present  
21 correct, current prices, or falsely showed, demonstrated, or  
22 represented competitive hearing aids models as being the correct,  
23 current model of such hearing aids.

24 (18) The licensee imitated or simulated the trademark, trade-  
25 name, brand, or label of another licensee under this Act with the  
26 intent to mislead or deceive purchasers or prospective purchasers.

27 (19) The licensee used in his advertising the name, model  
28 name, or trademark of a particular manufacturer of hearing aids  
29 with the intent to falsely imply a relationship with such manu-  
30 facturer that does not exist.

31 (20) The licensee used any trade name, corporate name, trade-  
32 mark, or other trade designation with the intent to mislead or  
33 deceive purchasers or prospective purchasers as to the name,  
34 nature, or origin of any hearing aid or part thereof or any  
35 material used therein.

36 (21) The licensee obtained or attempted to obtain information  
37 concerning the business of another licensee under this Act by  
38 bribery, or attempting to bribe an employee or agent of such other  
39 licensee, by false or misleading statements or representations or  
40 by the impersonation of one in authority.

41 (22) The licensee directly or indirectly gave, or offered to  
42 give, or permitted or caused to be given money or anything of value  
43 to any person who advises others in a professional capacity as an  
44 inducement to influence such person to influence those persons such  
45 person advises in a professional capacity to purchase or contract  
46 to purchase products sold or offered for sale by licensee or to  
47 refrain from purchasing or contracting to purchase products sold  
48 or offered for sale by any other licensee under this Act.

49 (23) The licensee represented or advertised that the hearing  
50 aid or any parts thereof was guaranteed without a disclosure of the  
51 guarantor, the nature and extent of the guarantee, and any  
52 conditions or limitations imposed thereon.

53 (24) The licensee falsely represented to a purchaser that a  
54 hearing aid was "custom-made," "made to order," "prescription-  
55 made," or any other representations that such hearing aid was  
56 specially fabricated for the purchaser.

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1 (25) The licensee refused to accept responsibility for the  
2 practice of a temporary licensee in a licensee's employ and under  
3 licensee's supervision.

4 (26) The licensee actively practiced fitting and dispensing  
5 of hearing aids while knowingly suffering from a contagious or  
6 infectious disease.

7 (27) The licensee practiced the fitting and dispensing of  
8 hearing aids under a false name or alias.

9 (28) The licensee had failed to actively engage in the  
10 practice of fitting and dispensing hearing aids for a period of  
11 three consecutive years.

12 Sec. 11. PROCEDURE. (a) Proceedings for revocation or  
13 suspension of a license shall be commenced by filing charges with  
14 the board in writing and under oath. The charges may be made by  
15 any person or persons.

16 (b) The president of the board shall fix a time and place  
17 for a hearing and shall cause a copy of the charges, together with  
18 a notice of the time and place fixed for the hearing, to be served  
19 upon the applicant or licensee against whom charges have been filed  
20 at least 10 days prior thereto. Service of such charges and notice  
21 of hearing thereon may be given by certified mail to the last known  
22 address of such licensee or applicant.

23 (c) At the hearing, such applicant or licensee shall have  
24 the right to appear either personally or by counsel or both, to  
25 produce witnesses, and to have subpoenas issued by the board.

26 (d) The board shall not be bound by strict rules of  
27 procedure or by the laws of evidence in the conduct of its  
28 proceedings, but the determination shall be founded upon sufficient  
29 legal evidence to sustain it.

30 (e) The board shall determine the charges upon their merits.  
31 The board shall enter an order in the permanent records of the  
32 board setting forth the finding of the board and its action  
33 thereon. A copy of such order of the board shall be mailed to such  
34 applicant or licensee to his last known address by certified mail.

35 (f) Any person whose license to practice the fitting and  
36 dispensing of hearing aids has been refused or has been cancelled,  
37 revoked, or suspended by the board, may, within 20 days after  
38 making and entering of such order, take an appeal to any district  
39 court of Travis County or any district court of the county of his  
40 residence, but the decision of the board shall not be stayed or  
41 enjoined except upon application to such district court after  
42 notice to the board.

43 (g) A case reviewed under the provisions of this section  
44 proceeds in such district court by trial de novo as that term is  
45 used and understood in appeals from justice of the peace courts to  
46 the county courts of this state. Appeal from the judgment of  
47 such district court will lie as in other civil cases.

48 (h) Upon application, the board may reissue a license to  
49 practice the fitting and dispensing of hearing aids to a person  
50 whose license has been cancelled or revoked but such application  
51 shall not be made prior to the expiration of a period of six months  
52 after the order of cancellation or revocation shall become final,  
53 and such application shall be made in such manner and form as the  
54 board may require.

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1       Sec. 12. FEES AND EXPENSES. (a) The board shall charge a  
2 fee of \$50 for examining an applicant for a license, which fee  
3 must accompany the application. If an applicant who, because of  
4 failure to pass the examination, be refused a license, he shall  
5 be allowed to take the second examination within one year upon the  
6 payment of a fee of \$50.

7       (b) The board shall charge a fee of \$25 for issuing a tempo-  
8 rary training permit, which fee must accompany the application for  
9 a temporary license.

10       (c) The board shall charge a fee of \$100 for issuing a  
11 license.

12       (1) Any person making application for a license without an  
13 examination as provided in Sections 7 and 8 must submit such fee  
14 with such application.

15       (2) Every person passing the examination and meeting the  
16 requirements of the board shall be notified that he is eligible for  
17 such license upon payments of the fee herein provided. Such notice  
18 shall be by certified mail at the address given on his examination  
19 papers. The fee for issuance of such license must be paid by the  
20 applicant within 90 days after having been notified. Failure to  
21 pay such fee within such time shall constitute a waiver of the  
22 right of such person to obtain his license.

23       (d) The board shall charge a fee of \$5 for each duplicate  
24 license or temporary training permit issued.

25       (e) The secretary-treasurer of the board shall, on or before  
26 the 10th day of each month, remit to the state treasurer all of the  
27 fees collected by the board during the preceding month for deposit  
28 in the general fund.

29       (f) The compensation and travel expenses allowance for  
30 members of the board and its employees shall be provided in the  
31 General Appropriations Act.

32       (g) The number of days for which compensation may be paid to  
33 members of the board shall not exceed two days in any calendar  
34 month except in those months in which examinations are held, but  
35 compensations may never be allowed to exceed six days in those  
36 months in which examinations are held.

37       (h) The board may make all necessary disbursements to carry  
38 out the provisions of this Act, including payment of the premium  
39 on the bond of the secretary-treasurer, stationery expenses,  
40 purchase and maintain or rent equipment and facilities necessary  
41 to carry out the examinations of applicants for license; pay for  
42 printing of all licenses; rent and furnish an office to maintain  
43 the permanent records of the board.

44       (i) After the Act has been effective for a period of two  
45 years, the total appropriations to the board shall never exceed  
46 the total amount received for all fees collected for the two-year  
47 period immediately prior to such appropriation.

48       Sec. 13. RENEWAL OF LICENSE. (a) On or before the first  
49 day of January of each year, every licensee under this Act shall  
50 pay to the secretary-treasurer of the board an annual renewal fee  
51 of \$100 for the renewal of his license to practice fitting and  
52 dispensing hearing aids for the current year. On receipt of said  
53 renewal fee, the board shall issue an annual renewal certificate  
54 bearing the number of his license, the year for which it is

1 renewed, and such other information from the records of the board  
2 as the board may deem necessary for the proper enforcement of this  
3 Act.

4 (b) When a licensee shall fail to pay his annual renewal  
5 fee by February 1st of each year, it shall be the duty of the board  
6 to notify such licensee by certified mail at his last known address  
7 that said annual renewal fee is due and unpaid. If the annual  
8 renewal fee is not paid within 60 days from the said date of  
9 mailing such notice, the board shall then cancel said license.

10 (c) Practicing, fitting, and dispensing hearing aids without  
11 an annual renewal certificate for the current year as provided  
12 herein, shall have the same force and effect and be subject to the  
13 same penalties and practicing without a license.

14 (d) After the board has cancelled a license for nonpayment  
15 of the annual renewal fee, the board may refuse to issue a new  
16 license until such fitter and dispenser of hearing aids has passed  
17 the regular examination for license as provided for by this Act.

18 (e) The board shall issue a duplicate license to any licensee  
19 whose license has been lost or destroyed and the board shall have  
20 the authority to prescribe the procedure and requirements for  
21 the issuance of a duplicate license.

22 Sec. 14. DUTY OF LICENSEE. (a) Every person practicing the  
23 fitting and dispensing of hearing aids in the state shall display  
24 his license in a conspicuous place in his principal office when  
25 he practices, and whenever required, exhibit such license to the  
26 board or its authorized representative.

27 (b) Every licensee shall deliver to each person supplied  
28 with a hearing aid, by the licensee or under his direction, a bill  
29 of sale which shall contain his signature, his printed name, the  
30 address of his principal office where he practices, the number of  
31 his license, a description of the make and model of the hearing  
32 aid furnished, the amount charged therefor, and whether the hearing  
33 aid is new, used or rebuilt.

34 (c) Such receipt as required in Subsection (b) of this  
35 section shall include the following statement in no smaller type  
36 than the largest type used in the body portion of such receipt,  
37 to-wit:

38 "The purchaser has been advised at the outset of his relation-  
39 ship with the undersigned fitter and dispenser of hearing aids,  
40 that any examination or representation made by a licensed fitter  
41 and dispenser of hearing aids in connection with the fitting and  
42 selling of this hearing aid is not an examination, diagnosis or  
43 prescription by a person duly licensed and qualified as a physician  
44 or surgeon authorized to practice medicine in the State of Texas  
45 and, therefore, must not be regarded as medical opinion or advice."

46 (d) Every licensee must, when dealing with a child 10 years  
47 of age or under, ascertain whether the child has been examined by  
48 an otolaryngologist for his recommendation within 90 days prior to  
49 the fitting. If such is not the case, a recommendation by the  
50 licensee to do so must be made and this fact noted on the bill of  
51 sale required in Subsection (b) of this section.

52 Sec. 15. PROHIBITED ACTS. (a) It is unlawful for any  
53 person to:

54 (1) Buy, sell, or fraudulently obtain a license to practice  
55 fitting and dispensing hearing aids or aid or abet therein;

1 (2) Alter a license to practice fitting and dispensing  
2 hearing aids with the intent to defraud;

3 (3) Willfully make a false statement in an application to  
4 the Texas Board of Examiners of Fitters and Dispensers of Hearing  
5 Aids for a license, a temporary license, or for the renewal of a  
6 license;

7 (4) Falsely impersonate any person duly licensed as a fitter  
8 and dispenser of hearing aids under the provisions of this Act;

9 (5) Practice, offer, or hold himself out as authorized to  
10 practice fitting and dispensing hearing aids or use in connection  
11 with his name, any designation tending to imply that he is a  
12 practitioner of fitting and dispensing hearing aids if not licensed  
13 to practice under the provisions of this Act; or

14 (6) Practice fitting and dispensing hearing aids during the  
15 time his license shall be cancelled, suspended, or revoked.

16 (b) It is unlawful for any persons not licensed fitters and  
17 dispensers of hearing aids or a licensed physician or surgeon to  
18 do any one act or thing or any combination of acts or things named  
19 or described in Subsections (c) or (d) of Section 1 of this Act.

20 Sec. 16. PENALTY. Whoever violates any provision of this  
21 Act shall be fined not less than \$100 nor more than \$500 or be  
22 confined in jail for a period of not more than 90 days, or both.  
23 Each day of said violation shall be a separate offense.

24 Sec. 17. TREATMENT OF EAR DEFECTS AND ADMINISTERING DRUGS.  
25 Nothing contained in this Act shall be construed to permit persons  
26 licensed under this Act to treat the ear for any defect whatsoever  
27 in any manner, nor to administer any drug or physical treatment  
28 whatsoever unless the licensee is a duly qualified physician and  
29 surgeon and licensed to practice by the Texas State Board of  
30 Medical Examiners.

31 Sec. 18. EMPLOYMENT OF LICENSEES. (a) Nothing in this Act  
32 shall prohibit a corporation, partnership, trust, association, or  
33 other like organization maintaining an established business in this  
34 state of selling or offering for sale hearing aids at retail with-  
35 out a license, provided that it employs only persons licensed under  
36 this Act in the direct sale or fitting of such products.

37 (b) Any person licensed under this Act who is employed by  
38 a corporation, partnership, trust, association, or other like  
39 organization to sell and/or fit hearing aids shall supply the  
40 board with the name and address of such employer at the time such  
41 licensee applies for an annual renewal of his license.

42 Sec. 19. EXCEPTIONS. Nothing in this Act shall be construed  
43 to apply to the following:

44 (1) Persons engaged in the practice of measuring human hear-  
45 ing as a part of the academic curriculum of an accredited insti-  
46 tution of higher learning.

47 (2) Persons engaged in the practice of measuring human hear-  
48 ing as a part of a program conducted by a nonprofit organization,  
49 provided such organization nor its employees does not sell hearing  
50 aids.

51 (3) Physicians and surgeons duly licensed by the Texas State  
52 Board of Medical Examiners and qualified to practice in the State  
53 of Texas.

54 (4) Persons employed and directly supervised by a physician  
55 and surgeon to test or measure human hearing, provided such persons  
56 do not sell hearing aids.

1#1152

1       Sec. 20. EXCEPTION FROM BASIC SCIENCE LAW. The provisions  
2 of Chapter 95, Acts of the 51st Legislature, Regular Session, 1949,  
3 as amended, commonly referred to as the Basic Science Law, do not  
4 apply to fitters and dispensers of hearing aids duly qualified and  
5 licensed under this Act who confine their practice to the fitting  
6 and dispensing of hearing aids.

7       Sec. 21. EMERGENCY. The importance of this legislation and  
8 the crowded condition of the calendars in both houses create an  
9 emergency and an imperative public necessity that the Constitu-  
10 tional Rule requiring bills to be read on three several days in  
11 each house be suspended, and this Rule is hereby suspended, and  
12 that this Act take effect and be in force from and after its  
13 passage, and it is so enacted.  
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1#1152

Austin, Texas


April 29, 1969

The Honorable Ben Barnes

President of the Senate

Sir:

We, your Committee on Public Health, to which was referred S.B. 287, have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do not pass, but that the Committee Substitute adopted in lieu thereof do pass and be printed.

  
Chairman

*[Handwritten signature]*

Amend C.S.S.B. No. 287, by striking out the words "employ and" in  
Section 1(c).

Page 1

**ADOPTED**

MAY 6 1969

*[Handwritten signature: Frank Schuck]*

SECRETARY OF SENATE

*[Handwritten mark: H-1 in a circle]*

*Lighter*

Amend C.S.S.B. No. 287, by deleting Subsection (d) of Section 1 and substituting in lieu thereof the following:

X "(d) 'Hearing aid' means any instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing, but as used herein shall not mean repair services, replacements for defective parts and shall not include batteries, cords and accessories."

X

**ADOPTED**

MAY 6 1969

*Charles Schuck*

SECRETARY OF SENATE

#2



*Lighter*

③ pg 2

Amend C.S.S.B. No. 287, by adding the words "or retail" immediately following the word wholesale in the last sentence of Subdivision (3) of Subsection (a) of Section 2.

pg 5  
✓

**ADOPTED**

MAY 6 1969

*Frank Schuck*  
SECRETARY OF SENATE

#3

4)

*Engler*

⊕ P 98  
2

Amend C.S.S.B. No. 287, by adding the words "or retail" immediately following the word wholesale in the last sentence of Subdivision (4) of Subsection (a) of Section 2.

J  
P 93  
✓

**ADOPTED**

MAY 6 1969

*Frank Schuch*  
SECRETARY OF SENATE

⊕ # 4

5

*Hilton*

Amend C.S.S.B. No. 287, by striking out the number  
"10" in the three places it appears in Section 3 and  
substituting therefor the number "30" in each instance.

✓

42  
P. 8

ADOPTED

MAY 6 1969

*Frank Schuck*

SECRETARY OF SENATE

#5

✓

6

*Lighter*

Amend Section 4(d) of C.S.S.B. No. 287 so that it shall read as follows:

✓ "(d) The Board, by majority vote, shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its jurisdiction."

pg 5

✓

**ADOPTED**

MAY 6 1965

*Frank Schnabel*  
SECRETARY OF SENATE

(#6)

Amend C.S.S.B. No. 287, by deleting Subsection (b) of Section 5 and substituting therefor the following:

"(b) A record shall be kept showing the name, age and present legal and mailing address of each applicant for examination. The record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained."

ADOPTED

MAY 6 1969

*Frank Schuck*  
SECRETARY OF SENATE

#7

*Lighter*

✓  
✓

Amend C.S.S.B. No. 287, by deleting the word "satisfactory" from Subsection (b) of Section 6.

pg # 7

ADOPTED

MAY 6 1969

*Frank Schuck*

SECRETARY OF SENATE

#6

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8727d8  
Amend C.S.S.B. No. 287, by deleting Subsection (e) of Section 6 and substituting therefor the following:

✓  
"(e) Each applicant shall be given due notice of the date and place of the examination and the subjects, areas, and/or skills that will be included within such examination, and there shall be no changes in said subjects, areas, and/or skills after the date of the examination has been announced and publicized nor shall there be more than one change or group of changes in any one calendar year. All examinations shall be conducted in writing and by such other means as the Board shall determine adequate to ascertain the qualifications of applicants. All applicants examined during a given calendar year shall be given the same examination. Every applicant successfully passing the examination and meeting all the requirements of this Act shall be registered by the Board as possessing the qualifications required by this Act and shall receive from the Board a license to fit and dispense hearing aids in this State."

**ADOPTED**

MAY 6 1969

*Frank Schnabel*  
SECRETARY OF SENATE

#9

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✓  
✓

*Hyman*

Amend C.S.S.B. No. 287, by deleting from Section 7 the word "satisfactory" and by deleting from Section 7 the words "this state" as they appear on line three of Page 5 of the printed Committee Substitute to Senate Bill No. 287 and substituting therefor the words "the United States of America".

ADOPTED

MAY 6 1969

*Charles Schuck*

SECRETARY OF SENATE

#10



⑪  
Page 10  
✓  
Amend C.S.S.B. No. 287, by deleting Subsection (a) of Section 9 and substituting therefor the following:

✓  
X "(a) The Board shall grant temporary training permits to fit and dispense hearing aids to any person applying to the Board who has never taken the examination provided in the Act and who possesses the qualifications in Subsection (b) of Section 6, of this Act, upon written application to the secretary-treasurer of the Board, the applicant shall make application on forms to be furnished by the Board furnishing sworn evidence that he possesses the qualifications contained in Subsection (b), Section 6, of this Act, that he has never taken the examination provided in this Act, and that he has never previously been issued a temporary training permit to fit and dispense hearing aids by the Board."

✓

**ADOPTED**

MAY 6 1969

*Frank J. Schuck*  
SECRETARY OF SENATE

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X  
Amend Subsection (b) of Section 9 in C.S.S.B. No. 287  
so that it shall read as follows:

"(b) The application for a temporary permit shall be accompanied by the affidavit of a person duly licensed and qualified to fit and dispense hearing aids in this state. The accompanying affidavit shall state that the applicant, if granted a temporary training permit, will be supervised by the affiant in all work done by applicant under such temporary training permit, that affiant will notify the Board within 10 days following applicant's terminating of supervision by affiant."  
X

ADOPTED

MAY 6 1969

*Charles Schuck*  
SECRETARY OF SENATE

#12

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13) F 7/2  
Amend Subsection (8) of Section 10, C.S.S.B.  
No. 287 to read as follows:

✓  
"(8) The licensee aids or abets any person not  
duly licensed under this Act in the fitting or  
dispensing of hearing aids."

ADOPTED

MAY 6 1966

*Charles Schuele*  
SECRETARY OF SENATE

#13

*[Handwritten signature]*

Amend Subsection (10) of Section 10, C.S.S.B.  
No. 287 to read as follows:

“(10) The licensee used or caused or promoted the use of any advertising matter, promotional literature, guarantees, warranty, disseminated or published with misleading, deceiving or false information. It is the intention of the Legislature that the provisions of this subsection (10) and the following subsection (11) be interpreted insofar as possible to coincide with the orders and rules of the Federal Trade Commission on such subjects.”

ADOPTED

MAY 8 1965

*[Handwritten signature: Charles Schuck]*

SECRETARY OF SENATE

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*[Handwritten checkmark]*

Amend C.S.S.B. No. 287, by deleting Subsections (14),  
(20) and (25) of Section 10 and renumbering the  
subsections correspondingly.

ADOPTED

MAY 6 1903

*Charles Schuch*  
SECRETARY OF SENATE

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pg 14

*Hygher*

Amend C.S.S.B. No. 287, by deleting the number "10"  
where it appears in Subsection (b) of Section 11  
and substituting therefor the number "30".

**ADOPTED**

MAY 6 1969

*Charles Schmitt*

SECRETARY OF SENATE

#16

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*Lighter*

Amend C.S.S.B. 287, subsection (a) of Section 12 of the  
Committee Substitute for S. B. 287 to read as follows:

(17)  
pg 8 & 16  
✓

"(a) The Board shall charge a fee of \$5 for issuing a  
temporary training permit, which fee must accompany the application  
for a temporary training permit."

ADOPTED

MAY 6 1969

*Frank Johnson*  
SECRETARY OF SENATE

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*Light*

Amend C.S.S.B. No. 287, by deleting the number "\$100.00" and substituting therefor the number "\$50.00" in Sub-section (c) of Section 12.

ADOPTED

MAY 6 1969

*Charles Schnabel*

SECRETARY OF SENATE

#13



Amend C.S.S.B. No. 287, by deleting the number "\$100.00" and substituting therefor "\$50.00" where it appears in Subsection (a) of Section 13.

ADOPTED

MAY 6 1969

*Charles Schwab*  
SECRETARY OF SENATE

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pg 19

*Alitum*

Amend

Subsection (c) Of Section 14, C.S.S.B. No. 287 ~~is amended~~ to read as follows:

"(c) Such receipt as required in subsection (b) of this section shall be accompanied by the following statement in no smaller type than the largest type used in the body portion of such receipt, to-wit:

"The purchaser has been advised at the outset of his relationship with the undersigned fitter and dispenser of hearing aids that any examination or representation made by a licensed fitter and dispenser of hearing aids in connection with the fitting and selling of this hearing aid is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice."

20

ADOPTED

MAY 6 1969

*Charles Schwab*

SECRETARY OF SENATE

#20

*Lighter*

Amend

Subsection (a) of Section 18, C.S.S.B. No. 287 ~~is amended~~ to read as follows:

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“(a) Nothing in this Act shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business in this state from engaging in the practice of fitting and dispensing hearing aids at retail or selling or offering for sale hearing aids at retail without a license, provided that it employs only persons licensed under this Act in the direct fitting and dispensing of such products, instruments or devices.”

ADOPTED

MAY 6 1969

*Charles Schnabel*  
SECRETARY OF SENATE

(#21)

S B no 284

Amend caption to conform to body  
of bill.

ADOPTED

MAY 6 1969

*Charles Schwab*

SECRETARY OF SENATE

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5.8 No. 287

11

A BILL TO BE ENTITLED

AN ACT

5 B no 287

relating to the licensing of persons to fit and dispense hearing aids; relating to the creation, organization, powers, duties, and procedures of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids; defining the Fitting and Dispensing of Hearing Aids; providing certain prohibited acts; providing for examinations for applicants for license; providing for issuance of license without examination; providing for the issuance of temporary training permits; providing grounds for the refusal to license and the revocation and suspension of license; providing fees for examination, issuance of license and training permits; providing for renewal of license; providing duties of licensees; providing for penalties; prohibiting licensees to treat a person or to administer drugs; providing for the sale of hearing aids by persons licensed under this Act; providing persons excepted from the Act; providing licensees under this Act exempt from the provisions of Chapter 95, Acts of the 51st Legislature, Regular Session, 1949, as amended; providing for severability; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. DEFINITIONS.

In this Act, unless the context requires a different definition:

(a) "Board" means the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

(b) "License" means license issued by the Board under this Act to person authorized to fit and dispense hearing aids.

(c) "Temporary Training Permit" means a permit issued by the Board to persons authorized to fit and dispense hearing aids only under the ~~employ and~~ supervision of a person who holds a license under this Act.

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(d) "Hearing aid" means any instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing, and any parts of such an instrument or device except batteries, cords and accessories.

(e) "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. Provided, for the purpose of this Act, the term "sell" or "sale" shall not include sales at wholesale by manufacturers to persons licensed under this Act, or to distributors for distribution and sale to persons licensed under this Act.

(f) "Fitting and Dispensing hearing aids" means the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections, adaptations and/or sales of hearing aids. The term also includes the sale of hearing aids, and the making of impressions for earmolds to be used as a part of the hearing aid.

## Section 2. BOARD OF EXAMINERS.

(a) The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is hereby created. The Board shall be composed of nine members with the following qualifications, to-wit:

(1) Six of such members shall possess the necessary qualifications to fit and dispense hearing aids in this state and have been residents of this state actually engaged in fitting and dispensing hearing aids for at least five years immediately preceding their appointment. No more than two of such six members shall be employed by, franchised by, or associated exclusively with the same hearing aid manufacturer;

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(2) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale hearing aid company;

(3) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment, and shall be an active practicing physician or surgeon duly licensed to practice in this state by the Texas State Board of Medical Examiners, and shall specialize in the practice of otolaryngology. Such member shall not have a financial interest in a retail hearing aid manufacturing company or a wholesale hearing aid company; and

(4) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment, and shall be an active practicing audiologist. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale hearing aid company.

(b) One who has served two full consecutive terms on the Board shall not be eligible for a reappointment to the Board for a period of 12 months immediately following the expiration of the second full term.

(c) In the event of death, resignation or removal of any members; the vacancy of the unexpired terms shall be filled by the Governor in the same manner as other appointments. Each appointee to the Board shall, within 15 days from the date of his appointment, qualify by taking the constitutional oath of office. Upon presentation of such oath, the Secretary of State shall issue commissions to appointees as evidence of their authority to act as members of the Board.

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(d) The members of the initial Board, to be appointed by the Governor to take office on the effective date of this Act, shall be divided into three classes, to-wit: Class One, Class Two, and Class Three, and their terms of office shall be determined by lot at the first meeting of the Board. The three Class One members shall hold office for two years; and the three Class Two members shall hold office for four years; and the three Class Three members shall hold office for six years respectively, from the time of their appointment. Biennially thereafter, the Governor shall appoint three members of the Board to hold office for a term of six years.

(e) The Board shall be represented by the Attorney General and the District and County Attorneys of the State.

Indent Section 3. BOARD ORGANIZATION AND MEETINGS.

# Within 60 days after their appointment and qualification the initial Board shall hold its first meeting and elect a President, Vice-President, and Secretary-Treasurer. The term of office for all officers of the Board shall be for a period of one year.

# The Board shall hold regular meetings at least twice a year at which an examination of applicants for license shall be given. Not less than ~~30~~ days notice of such meeting shall be given by publication in at least three daily newspapers of general circulation to be selected by the Board. Written notice of such regular meetings of the Board shall be given to the members by the Secretary-Treasurer of the Board by certified mail not less than ~~30~~ days prior to the date of such regular meeting. Special meetings of the Board shall be held upon the written request of a majority of the members or upon the call of the President. Written notice of such special meetings of the Board shall be given to members by the Secretary-Treasurer of the Board by certified mail not less than ~~30~~ days prior to the date of the special meetings. A majority of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present provided such period shall not be longer than three successive days.



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Section 4. POWERS AND DUTIES OF THE BOARD.

(a) The Board shall have the power to make such procedural rules consistent with this Act as may be necessary for the performance of its duties.

(b) The Board shall have the power to appoint committees from its own membership, the duties of which shall be to consider such matters, pertaining to the enforcement of this Act, as shall be referred to said committees, and they shall make recommendations to the Board in respect thereto.

(c) The Board shall have the power to employ the services of stenographers, inspectors, agents, attorneys, and other necessary assistants in carrying out the provisions of this Act.

~~(d) The Board, any committee, or any member thereof, shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its jurisdiction.~~

(e) The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for injunction shall be in addition to any other action, proceeding or remedy authorized by law.

(f) The Board is charged with the duty of aiding in the enforcement of this Act, and any member of the Board may present to the Attorney General or a County or District Attorney of this state complaints relating to violations of any provision of this Act; and the Board through the members, officers, counsel, and agents may assist in the trial of any case involving alleged violations of this Act, subject to the control of the Attorney General, County Attorney, or District Attorney charged with the responsibility of prosecuting such case.

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(g) Before entering upon the discharge of the duties of such office, the Secretary-Treasurer of the Board shall give such bond for the performance of this duty as the Board may require, the premium of such bond is to be paid from any available funds.

(h) The Board shall adopt an official seal and the form of a license of suitable design and shall have an office where all the permanent records shall be kept.

#### Section 5. RECORDS.

(a) The Board shall preserve an accurate record of all meetings and proceedings of the Board.

(b) A record shall be kept showing the name, age and present legal and mailing address of each applicant for examination together with such information as the Board may desire to record. The record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained.

(c) The Secretary-Treasurer of the Board shall on or before March 1st of each year send a certified copy of such record to the Secretary of State for permanent record. A certified copy of said record with the hand and seal of the Secretary-Treasurer of the Board to the Secretary of State, shall be admitted as evidence in all courts.

(d) The Board shall keep a record of each license issued under this Act containing the name, residence, place of business of the person to whom each license has been issued, and the date of issuance of each of such license and all information pertaining to renewals, revocations and suspensions of such licensee.

#### Section 6. EXAMINATION: APPLICATION.

(a) Every person desiring to engage in fitting and dispensing hearing aids in the State of Texas shall be required to pass an examination given by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

(b) The applicant shall make application, furnishing to the Secretary-Treasurer of the Board on forms to be furnished by the Board, ~~satisfactory~~ sworn evidence that he has attained the age of 21 years, is of good moral character, is a citizen of the United States, is free of contagious or infectious disease, and has graduated from an accredited high school or equivalent.

and such other information as the Board may deem necessary for the enforcement of this Act.

(c) The examination shall consist of written, oral or practical tests in the following areas as they pertain to the fitting and dispensing of hearing aids, to-wit:

- (1) Basic physics of sound;
- (2) The structure and function of hearing aids;
- (3) Fitting of hearing aids;
- (4) Pure tone audiometry, including air conduction testing and bone conduction testing;
- (5) Live voice and/or record voice speech audiometry;
- (6) Masking when indicated;
- (7) Recording and evaluation of audiograms and speech audiometry to determine the hearing aid candidacy;
- (8) Selection and adaption of hearing aids and testing of hearing aids; and
- (9) Taking of earmold impressions.

(d) No part of the examination shall consist of tests requiring knowledge of the diagnosis and/or treatment of any disease or injury to the human body.

(e) Each applicant shall be given due notice of the date and place of the examination and the subjects, areas, and/or skills that will be included within such examination. All examinations shall be conducted in writing and by such other means as the Board shall determine adequate to ascertain the qualifications of applicants. All applicants examined at the same time shall be given the same written examination. Every applicant successfully passing the examination and meeting all requirements of the Board shall be registered by the Board as possessing the qualifications required by this Act and shall receive from the Board a license to fit and dispense hearing aids in this state.

Section 7. LICENSE WITHOUT EXAMINATION.

Within 120 days after the effective date of this Act, and not thereafter, any person engaged in fitting and dispensing hearing aids on the effective date of this Act, shall be registered by the Board as passing the qualifications of this Act and shall receive from the Board a license to fit and dispense hearing aids in this state without taking the examination provided for in this Act upon presentation, in writing, by such person to the Secretary-Treasurer of the Board on forms to be furnished by the Board, ~~satisfactory~~ sworn evidence that such person has attained the age of 21 years of age, is of good moral character, is a citizen of the United States, is free of contagious or infectious diseases and has been engaged in fitting and dispensing hearing aids in ~~this state~~ for a period of at least two years immediately prior to the effective date of this Act.

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~~Section~~ 8. RECIPROCAL ARRANGEMENTS.

(a) Upon proper application, the Texas Board of Examiners in Fitting and Dispensing of Hearing Aids shall grant a license to fit and dispense hearing aids without requiring an examination to licentiates of other states or territories having requirements equivalent to or higher than those in effect pursuant to this Act for fitting and dispensing hearing aids.

(b) Applications for license under the provisions of this section shall be in writing and upon a form prescribed by the Board. Such applications shall be filed with the Secretary-Treasurer of the Board. The application shall be accompanied by a license or a certified copy of a license to fit and dispense hearing aids, lawfully issued to the applicant by some other state or territory; and shall also be accompanied by an affidavit of the President or Secretary of the Board of Examiners in Fitting and Dispensing Hearing Aids who issued the license. The affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked, and that the statement of qualifications made in this application for license in Texas is true and correct.

(c) Applicants for a license under the provisions of this section shall subscribe to an oath in writing which shall be a part of said application, stating that the license, certificate or authority under which the applicant fits and dispenses hearing aids in the state or territory from which the applicant is removed, was at that time of such removal in full force and not suspended or cancelled; that the applicant is the identical person to whom the said certificate or license was issued and that

no proceeding was pending at the time of such removal, or at the present time pending against the applicant for the cancellation, suspension or revocation or such certificate or license in the state or territory in which the same was issued and that no prosecution was then or at the time of application pending against the applicant in any state or federal court for any offense under the laws of Texas which is a felony.

Section 9. TEMPORARY TRAINING PERMIT.

(a) The Board shall grant a temporary training permit to fit and dispense hearing aids to any person applying to the Board who has never taken the examination provided in the Act and who possesses the qualifications in Subsection (b) of Section 6, of this Act, upon written application to the Secretary-Treasurer of the Board, the applicant shall make application on forms to be furnished by the Board furnishing satisfactory sworn evidence that he possesses the qualifications contained in Subsection (b), Section 6, of this Act, that he has never taken the examination provided in this Act, and that he has never previously been issued a temporary training permit to fit and dispense hearing aids by the Board, ~~and such other information that the Board determines necessary for the proper enforcement of this Act.~~

(b) The application for a temporary permit shall be accompanied by the affidavit of a person duly licensed and qualified to fit and dispense hearing aids in this state. The accompanying affidavit shall state that the applicant, if granted a temporary training permit, will be <sup>supervised</sup> ~~employed~~ by the affiant, that the affiant will maintain supervision of all work done by applicant under such temporary training permit, that affiant will notify the Board within 10 days following applicant's terminating of employment with affiant, and such other information as the Board may determine necessary for the proper enforcement of this Act.

(c) A temporary training permit shall authorize the holder thereof, to fit and dispense hearing aids for a period of 6 months or until the holder thereof shall have successfully passed the examination required for a license under this Act, whichever occurs first.

(d) A temporary training permit shall automatically become void at the end of the period of 6 months from the date of its issuance unless extended for an additional period not to exceed 6 months by the Board. The Board shall never extend a temporary training permit more than one time.

~~Section~~ 10. REFUSAL TO LICENSE AND REVOCATION OR SUSPENSION OF LICENSE - GROUNDS.

The Board may, in its discretion, refuse to issue a license to any applicant and may cancel, revoke or suspend the operation of any license by it granted, for any of the following reasons:

(1) The applicant or licensee is guilty of gross immorality.

(2) The applicant or licensee is unfit or incompetent by reason of negligence.

(3) The applicant or licensee is guilty of any fraud, deceit or misrepresentation in the fitting and dispensing hearing aids or in his seeking of a license under this Act.

(4) The applicant or licensee has been convicted of a felony or a misdemeanor which involved moral turpitude.

(5) The applicant or licensee is a habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having similar effects or had become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind.

(6) The applicant or licensee has violated any of the provisions of this Act.

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(7) The licensee has knowingly, directly or indirectly employed, hired, procured, or induced a person not licensed to fit and dispense hearing aids in this state, to so fit and dispense hearing aids.

(8) The licensee ~~directly or indirectly~~ aids or abets any person not duly licensed under this Act in the fitting or dispensing of hearing aids.

(9) The licensee lends, leases, rents, or in any other manner places his license at the disposal or in the service of any person not licensed to fit and dispense hearing aids in this state.

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(10) The licensee used or caused or promoted the use of any advertising matter, promotional literature, guarantees, warranty, label, brand, insignia, or any other representation however disseminated or published with misleading, deceiving, improbable or false information.

(11) The licensee advertised a particular model, type or kind of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type, or kind when it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than was advertised.

(12) The licensee represented that the service or advice of a person licensed to practice medicine by the Texas State Board of Medical Examiners is used, or made available in the selection, fitting, adjustment, maintenance, or repair of a hearing aid when such representation was not true.



(13) The licensee used the term "doctor", "clinic" or any like words, abbreviations or symbols in the conduct of his business which would tend to connote that the licensee was a physician or surgeon.

(14) The licensee conducted his business under any name that is connotative of affiliation with or approval by the United States Government, the State of Texas, or any department, agency, or political subdivision thereof.

(15) The licensee defamed another licensee under this Act by falsely imputing to him dishonorable conduct, inability to perform contracts, questionable credit standing, or any other false representation or falsely disparaging the products of such other licensee in any respect, or the business methods, selling prices, values, credit terms, policies, or services of such other licensee.

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(16) The licensee displayed competitive products in his place of business, or in the advertising in such manner as to falsely disparage them.

(17) The licensee quoted prices of competitive hearing aids or devices without disclosing that the prices were not the present, correct, current prices, or falsely showed, demonstrated or represented competitive hearing aids models as being the correct, current model of such hearing aids.

(18) The licensee imitated or simulated the trademark, tradename, brand, or label of another licensee under this Act with the intent to mislead or deceive purchasers or prospective purchasers.

(19) The licensee used in his advertising the name, model name or trademark of a particular manufacturer of hearing aids with the intent to falsely imply a relationship with such manufacturer that does not exist.

(20) The licensee used any trade name, corporate name, trademark or other trade designation with the intent to mislead or deceive purchasers or prospective purchasers as to the name, nature or origin of any hearing aid or part thereof or any material used therein.

(19)(21) The licensee obtained or attempted to obtain information concerning the business of another licensee under this Act by bribery, or attempting to bribe an employee or agent of such other licensee or by the impersonation of one in authority.

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(20~~22~~) The licensee directly or indirectly gave, or offered to give or permitted or caused to be given money or anything of value to any person who advises others in a professional capacity as an inducement to influence such person to influence those persons such person advises in a professional capacity to purchase or contract to purchase products sold or offered for sale by licensee or to refrain from purchasing or contracting to purchase products sold or offered for sale by any other licensee under this Act.

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(20) The licensee falsely represented to a purchaser that a hearing aid was "custom-made", "made to order", "prescription-made" or any other representations that such hearing aid was specially fabricated for the purchaser.

(21)(22) The licensee refused to accept responsibility for the acts of a temporary training permittee in a licensee's employ and under licensee's supervision.

(25) The licensee actively engaged in fitting and dispensing of hearing aids while knowingly suffering from a contagious or infectious disease.

(23)(26) The licensee with fraudulent intent, engaged in the fitting and dispensing of hearing aids under a false name or alias.

(24)(27) The licensee had failed to actively engage in the fitting and dispensing of hearing aids for a period of three consecutive years.

# Section 11. PROCEDURE.

(a) Proceedings for revocation or suspension of a license shall be commenced by filing charges with the Board in writing and under oath. The charges may be made by any person or persons.

(b) The president of the Board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing to be served upon the applicant or licensee against whom charges have been filed at least 30 days prior thereto. Service of such charges and notice of hearing thereon may be given by certified mail to the last known address of such licensee or applicant.

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(c) At the hearing, such applicant or licensee shall have the right to appear either personally or by counsel or both to produce witnesses, and to have subpoenas issued by the Board.

(d) The Board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings but the determination shall be founded upon sufficient legal evidence to sustain it.

(e) The Board shall determine the charges upon their merits. The Board shall enter an order in the permanent records of the Board setting forth the findings of the Board and its action thereon. A copy of such order of the Board shall be mailed to such applicant or licensee to his last known address by certified mail.

(f) Any person whose license to fit and dispense hearing aids has been refused or has been cancelled, revoked or suspended by the Board, may, within 20 days after making and entering of such order, take an appeal to any district court of Travis County or any district court of the county of his residence.

(g) A case reviewed under the provisions of this section proceeds in such district court by trial de novo as that term is used and understood in appeals from justice of the peace courts to the county courts of this state. Appeal from the judgment of such district court will lie as other civil cases.

(h) Upon application, the Board may reissue a license to fit and dispense hearing aids to a person whose license has been cancelled or revoked but such application shall not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final, and such application shall be made in such manner and form as the Board may require.

Section 12. FEES AND EXPENSES.

- (a) The Board shall charge a fee of <sup>5.00</sup>~~\$25.00~~ for issuing a temporary training permit, which fee must accompany the application for a temporary training permit.
- (b) The Board shall charge a fee of \$25.00 for examining an applicant for a license, which fee must accompany the application.
- (c) The Board shall charge a fee of <sup>50.00</sup>~~\$100.00~~ for issuing a license.
- (1) Any person making application for a license without an examination as provided in Sections 7 and 8 must submit such fee with such application.
- (2) Every person passing the examination and meeting the requirements of the Board shall be notified that he is eligible for such license upon payment of the fee herein provided. Such notice shall be by certified mail at the address given on his examination papers. The fee for issuance of such license must be paid by the applicant within 90 days after having been notified. Failure to pay such fee within such time shall constitute a waiver of the right to such person to obtain his license.
- (d) The Board shall charge a fee of \$5.00 for each duplicate license or duplicate temporary training permit.
- (e) The secretary-treasurer of the Board shall, on or before the 10th day of each month, remit to the State Treasurer all of the fees collected by the Board during the preceding month for deposit in the general fund.
- (f) The compensation and travel expenses allowance for members of the Board and its employees shall be provided in the General Appropriations Act.

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(g) The number of days for which compensation may be paid to members of the Board shall not exceed two days in any calendar month except in those months in which examinations are held, but compensations may never be allowed to exceed six days in those months in which examinations are held.

(h) The Board may authorize all necessary disbursements to carry out the provisions of this Act, including payment of the premium on the bond of the Secretary-treasurer, stationery expenses, purchase and maintain or rent equipment and facilities necessary to carry out the examinations of applications for license; pay for printing of all licenses; rent and furnish an office to maintain the permanent records of the Board.

(i) After the Act has been effective for a period of two years, the total appropriations to the Board shall never exceed the total amount received for all fees collected for the two-year period immediately prior to such appropriation.

#### Section 13. RENEWAL OF LICENSE.

(a) On or before the first day of January of each year, every licensee under this Act shall pay to the Secretary-treasurer of the Board an annual renewal fee of \$15.00 for the renewal of his license to fit and dispense hearing aids for the current year. On receipt of said renewal fee, the Board shall issue an annual renewal certificate bearing the number of his license, the year for which it is renewed and such other information from the records of the Board as the Board may deem necessary for the proper enforcement of this Act.

(b) When a licensee shall fail to pay his annual renewal fee by February 1st of each year, it shall be the duty of the

Board to notify such licensee by certified mail at his last known address that said annual renewal fee is due and unpaid; if the annual renewal fee is not paid within 60 days from the said date of mailing such notice, the Board shall then cancel said license.

(c) Fitting and dispensing hearing aids without an annual renewal certificate for the current year as provided herein shall have the same force and effect and be subject to the same penalties as fitting and dispensing hearing aids without a license.

(d) After the Board shall have cancelled a license for non-payment of the annual renewal fee, the Board may refuse to issue a new license until such fitter and dispenser of hearing aids has passed the regular examination for license as provided for by this Act.

(e) The Board shall issue a duplicate license to any licensee whose license has been lost or destroyed and the Board shall have the authority to prescribe the procedure and requirements for the issuance of the duplicate license.

#### Section 14. DUTY OF A LICENSEE.

(a) Every person engaged in the fitting and dispensing of hearing aids in this state shall display his license in a conspicuous place in his principal office and whenever required, exhibit such license to the Board or its authorized representatives.

(b) Every licensee shall deliver to each person supplied with a hearing aid, by the licensee or under his direction, a bill of sale which shall contain his signature, his printed name, the address of his principal office, the number of his license, a description of the make and model of the hearing aid furnished and the amount charged therefor, and whether the hearing aid is new, used or rebuilt.

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(c) Such receipt as required in Subsection (b) of this section shall ~~include~~ the following statement in no smaller type than the largest type used in the body portion of such receipt, to-wit:

"The purchaser has been advised at the outset of his relationship with the undersigned fitter and dispenser of hearing aids that any examination or representation made by a licensed fitter and dispenser of hearing aids in connection with the fitting and selling of this hearing aid is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice."

(d) Every licensee must, when dealing with a child 10 years of age or under, ascertain whether the child has been examined by an otolaryngologist for his recommendation within 90 days prior to the fitting. If such is not the case, a recommendation by the licensee to do so must be made and this fact noted on the bill of sale required in Subsection (b) of this Section.

Section 15. PROHIBITED ACTS.

(a) It is unlawful for any person to:

(1) Buy, sell, or fraudulently obtain a license to fit and dispense hearing aids or aid or abet therein;

(2) Alter a license to fit and dispense hearing aids with the intent to defraud;

(3) Willfully make a false statement in an application to the Texas Board of Examiners of Fitters and Dispensers of Hearing Aids for a license, a temporary training permit or for the renewal of a license;

(4) Falsely impersonate any person duly licensed as a fitter and dispenser of hearing aids under the provisions of this Act.

(5) Offer or hold himself out as authorized to fit and dispense hearing aids, or use in connection with his name any designation tending to imply that he is authorized to engage in the fitting and dispensing of hearing aids, if not so licensed under the provisions of this Act; or

(6) Engage in the fitting and dispensing of hearing aids during the time his license shall be cancelled, suspended or revoked.

(b) It is unlawful for any person not a licensed fitter and dispenser of hearing aids or holder of temporary training permit provided in this Act, or a licensed physician or surgeon to do any one act or thing or any combination of acts or things named or described in Subsection (b) of Section 1 of this Act.

#### Section 16. PENALTY.

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Whoever violates any provision of this Act shall be fined not less than \$100.00 nor more than \$500.00 or be confined in jail for a period of not more than 90 days, or both. Each day of said violation shall be a separate offense.

#### Section 17. TREATMENT OF EAR DEFECTS AND ADMINISTRATION OF DRUGS.

Nothing contained in this Act shall be construed to permit persons licensed under this Act to treat the ear for any defect whatsoever in any manner, nor to administer any drug or physical treatment whatsoever unless the licensee is a duly qualified physician and surgeon and licensed to practice by the Texas State Board of Medical Examiners. Nothing in this Act shall be construed to amend or modify the laws regulating the practice of medicine as defined by Article 4510, Revised Civil Statutes of Texas.

#### Section 18. EMPLOYMENT OF LICENSEE.

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(a) ~~Nothing in this Act shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business in this state of selling or offering for sale hearing aids at retail without a license, provided that it employs only persons licensed under this Act in the direct fitting and dispensing of such products.~~



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(b) Any person licensed under this Act who is employed by a corporation, partnership, trust, association or other like organization to sell and/or fit hearing aids shall supply the Board with the name and address of such employer at the time such licensee applies for an annual renewal of his license.

Section 19. EXCEPTIONS.

Nothing in this Act shall be construed to apply to the following:

(1) Persons engaged in the practice of measuring human hearing as a part of the academic curriculum of an accredited institution of higher learning.

(2) Persons engaged in the practice of measuring human hearing as a part of a program conducted by a non-profit organization, provided such organization or its employees does not sell hearing aids.

(3) Physicians and surgeons duly licensed by the Texas State Board of Medical Examiners and qualified to practice in the State of Texas.

(4) Persons employed and directly supervised by a physician and surgeon to test or measure human hearing, provided such persons do not sell hearing aids.

Section 20. EXCEPTIONS FROM THE BASIC SCIENCE LAW.

The provisions of Chapter 95, Acts of the 51st Legislature, Regular Session, 1949, as amended commonly referred to as the Basic Science Law do not apply to fitters and dispensers of hearing aids duly qualified and licensed under this Act who confine their activity to the fitting and dispensing of hearing aids.

~~Section~~ 21. SEVERABILITY.

If any portion of this Act or the application thereof to any person, case or circumstance is held invalid, such invalidity shall not affect any other provision or application which can be given effect without the invalid provision or application, and to this end this provision of this Act is declared to be severable.

~~Section~~ 22. EFFECTIVE DATE.

This Act shall become effective January 1, 1970.

(d) "Hearing aid" means any instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing, but as used herein shall not mean repair services, replacements for defective parts and shall not include batteries, cords and accessories.

(e) "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. Provided, for the purpose of this Act, the term "sell" or "sale" shall not include sales at wholesale by manufacturers to persons licensed under this Act, or to distributors for distribution and sale to persons licensed under this Act.

(f) "Fitting and Dispensing hearing aids" means the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections, adaptations and/or sales of hearing aids. The term also includes the sale of hearing aids, and the making of impressions for earmolds to be used as a part of the hearing aid. \_\_\_\_\_

Sec. 2. BOARD OF EXAMINERS.

(a) The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is hereby created. The Board shall be composed of nine members with the following qualifications, to-wit:

(1) Six of such members shall possess the necessary qualifications to fit and dispense hearing aids in this state and have been residents of this state actually engaged in fitting and dispensing hearing aids for at least five years immediately preceding their appointment. No more than two of such six members shall be employed by, franchised by, or associated exclusively with the same hearing aid manufacturer; \_\_\_\_\_

(2) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale hearing aid company;

(3) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment, shall be an active practicing physician or surgeon duly licensed to practice in this state by the Texas State Board of Medical Examiners, and specialize in the practice of otolaryngology. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company; and

(4) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and shall be an active practicing audiologist. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company.

(b) One who has served two full consecutive terms on the Board shall not be eligible for a reappointment to the Board for a period of 12 months immediately following the expiration of the second full term.

(c) In the event of death, resignation or removal of any members; the vacancy of the unexpired terms shall be filled by the Governor in the same manner as other appointments. Each appointee to the Board shall, within 15 days from the date of his appointment, qualify by taking the constitutional oath of office. Upon presentation of such oath, the Secretary of State shall issue commissions to appointees as evidence of their authority to act as members of the Board. \_\_\_\_\_

(d) The members of the initial Board, to be appointed by the Governor to take office on the effective date of this Act, shall be divided into three classes, to-wit: Class One, Class Two, and Class Three, and their terms of office shall be determined by lot at the first meeting of the Board. The three Class One members shall hold office for two years; and the three Class Two members shall hold office for four years; and the three Class Three members shall hold office for six years respectively, from the time of their appointment. Biennially thereafter, the Governor shall appoint three members of the Board to hold office for a term of six years.

(e) The Board shall be represented by the Attorney General and the District and County Attorneys of the state. \_\_\_\_\_

Sec. 3. BOARD ORGANIZATION AND MEETINGS.

Within 60 days after their appointment and qualification the initial Board shall hold its first meeting and elect a President, Vice-President, and Secretary-Treasurer. The term of office for all officers of the Board shall be for a period of one year.

The Board shall hold regular meetings at least twice a year at which an examination of applicants for license shall be given. Not less than 30 days notice of such meeting shall be given by publication in at least three daily newspapers of general circulation to be selected by the Board. Written notice of such regular meetings of the Board shall be given to the members by the Secretary-Treasurer of the Board by certified mail not less than 30 days prior to the date of such regular meeting. Special meetings of the Board shall be held upon the written request of a majority of the members or upon the call of the President. Written notice of such special meetings of the Board shall be given to members by the Secretary-Treasurer of the Board by certified mail not less than 30 days prior to the date of the special meetings. A majority of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present provided such period shall not be longer than three successive days. \_\_\_\_\_

Section 4. POWERS AND DUTIES OF THE BOARD.

(a) The Board shall have the power to make such procedural rules consistent with this Act as may be necessary for the performance of its duties.

(b) The Board shall have the power to appoint committees from its own membership, the duties of which shall be to consider such matters, pertaining to the enforcement of this Act, as shall be referred to said committees, and they shall make recommendations to the Board in respect thereto.

(c) The Board shall have the power to employ the services of stenographers, inspectors, agents, attorneys, and other necessary assistants in carrying out the provisions of this Act.

(d) The Board, by majority vote, shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its jurisdiction.

(e) The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for injunction shall be in addition to any other action, proceeding or remedy authorized by law.

(f) The Board is charged with the duty of aiding in the enforcement of this Act, and any member of the Board may present to the Attorney General or a County or District Attorney of this state complaints relating to violations of any provision of this Act; and the Board through the members, officers, counsel, and agents may assist in the trial of any case involving alleged violations of this Act, subject to the control of the Attorney General, County Attorney, or District Attorney charged with the responsibility of prosecuting such case. \_\_\_\_\_

(g) Before entering upon the discharge of the duties of such office, the Secretary-Treasurer of the Board shall give such bond for the performance of this duty as the Board may require, the premium of such bond is to be paid from any available funds.

(h) The Board shall adopt an official seal and the form of a license of suitable design and shall have an office where all the permanent records shall be kept. \_\_\_\_\_

Sec. 5. RECORDS.

(a) The Board shall preserve an accurate record of all meetings and proceedings of the Board.

(b) A record shall be kept showing the name, age and present legal and mailing address of each applicant for examination. The record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained.

(c) The Secretary-Treasurer of the Board shall on or before March 1st of each year send a certified copy of such record to the Secretary of State for permanent record. A certified copy of said record with the hand and seal of the Secretary-Treasurer of the Board to the Secretary of State, shall be admitted as evidence in all courts.

(d) The Board shall keep a record of each license issued under this Act containing the name, residence, place of business of the person to whom each license has been issued, and the date of issuance of each of such license and all information pertaining to renewals, revocations and suspensions of such licensee. \_\_\_\_\_

Sec. 6. EXAMINATION: APPLICATION.

(a) Every person desiring to engage in fitting and dispensing hearing aids in the State of Texas shall be required to pass an examination given by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids. \_\_\_\_\_

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(b) The applicant shall make application, furnishing to the Secretary-Treasurer of the Board on forms to be furnished by the Board, sworn evidence that he has attained the age of 21 years, is of good moral character, is a citizen of the United States, is free of contagious or infectious disease, and has graduated from an accredited high school or equivalent, and such other information as the Board may deem necessary for the enforcement of this Act.

(c) The examination shall consist of written, oral or practical tests in the following areas as they pertain to the fitting and dispensing of hearing aids, to-wit:

- (1) Basic physics of sound;
- (2) The structure and function of hearing aids;
- (3) Fitting of hearing aids;
- (4) Pure tone audiometry, including air conduction testing and bone conduction testing;
- (5) Live voice and/or record voice speech audiometry;
- (6) Masking when indicated;
- (7) Recording and evaluation of audiograms and speech audiometry to determine the hearing aid candidacy;
- (8) Selection and adaption of hearing aids and testing of hearing aids; and
- (9) Taking of earmold impressions.

(d) No part of the examination shall consist of tests requiring knowledge of the diagnosis and/or treatment of any disease or injury to the human body.

(e) Each applicant shall be given due notice of the date and place of the examination and the subjects, areas, and/or skills \_\_\_\_\_



that will be included within such examination, and there shall be no changes in said subjects, areas, and/or skills after the date of the examination has been announced and publicized nor shall there be more than one change or group of changes in any one calendar year. All examinations shall be conducted in writing and by such other means as the Board shall determine adequate to ascertain the qualifications of applicants. All applicants examined during a given calendar year shall be given the same examination. Every applicant successfully passing the examination and meeting all the requirements of this Act shall be registered by the Board as possessing the qualifications required by this Act and shall receive from the board a license to fit and dispense hearing aids in this state.

Sec. 7. LICENSE WITHOUT EXAMINATION.

⑧ Within 120 days after the effective date of this Act, and not thereafter, any person engaged in fitting and dispensing hearing aids on the effective date of this Act, shall be registered by the Board as passing the qualifications of this Act and shall receive from the Board a license to fit and dispense hearing aids in this state without taking the examination provided for in this Act upon presentation, in writing, by such person to the Secretary-Treasurer of the Board on forms to be furnished by the Board, sworn evidence - that such person has attained the age of 21 years of age, is of good moral character, is a citizen of the United States, is free of contagious or infectious diseases and has been engaged in fitting and dispensing hearing aids in the United State of America for a period of at least two years immediately prior to the effective date of this Act.

Sec. 8. RECIPROCAL ARRANGEMENTS.

(a) Upon proper application, the Texas Board of Examiners in Fitting and Dispensing of Hearing Aids shall grant a license to fit and dispense hearing aids without requiring an examination to licentiates of other states or territories having requirements equivalent to or higher than those in effect pursuant to this Act for fitting and dispensing hearing aids.

(b) Applications for license under the provisions of this section shall be in writing and upon a form prescribed by the Board. Such applications shall be filed with the Secretary-Treasurer of the Board. The application shall be accompanied by a license or a certified copy of a license to fit and dispense hearing aids, lawfully issued to the applicant by some other state or territory; and shall also be accompanied by an affidavit of the President or Secretary of the Board of Examiners in Fitting and Dispensing Hearing Aids who issued the license. The affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked, and that the statement of qualifications made in this application for license in Texas is true and correct.

(c) Applicants for a license under the provisions of this section shall subscribe to an oath in writing which shall be a part of said application, stating that the license, certificate or authority under which the applicant fits and dispenses hearing aids in the state or territory from which the applicant is removed, was at that time of such removal in full force and not suspended or cancelled; that the applicant is the identical person to whom the \_\_\_\_\_

said certificate or license was issued and that no proceeding was pending at the time of such removal, or at the present time pending against the applicant for the cancellation, suspension or revocation or such certificate or license in the state or territory in which the same was issued and that no prosecution was then or at the time of application pending against the applicant in any state or federal court for any offense under the laws of Texas which is a felony. \_\_\_\_\_

Sec. 9. TEMPORARY TRAINING PERMIT.

(a) The Board shall grant a temporary training permit to fit and dispense hearing aids to any person applying to the Board who has never taken the examination provided in the Act and who possesses the qualifications in Subsection (b) of Section 6, of this Act, upon written application to the Secretary-Treasurer of the Board, the applicant shall make application on forms to be furnished by the Board furnishing sworn evidence that he possesses the qualifications contained in Subsection (b), Section 6, of this Act, that he has never taken the examination provided in this Act, and that he has never previously been issued a temporary training permit to fit and dispense hearing aids by the Board.

(b) The application for a temporary permit shall be accompanied by the affidavit of a person duly licensed and qualified to fit and dispense hearing aids in this state. The accompanying affidavit shall state that the applicant, if granted a temporary training permit, will be supervised by the affiant in all work done by applicant under such temporary training permit, that affiant will notify the Board within 10 days following applicant's terminating of supervision by affiant. \_\_\_\_\_

(c) A temporary training permit shall authorize the holder thereof, to fit and dispense hearing aids for a period of ~~6 months~~ <sup>one year</sup> or until the holder thereof shall have successfully passed the examination required for a license under this Act, whichever occurs first. ①

(d) A temporary training permit shall automatically become void at the end of the period of 6 months from the date of its issuance unless extended for an additional period not to exceed 6 months by the Board. The Board shall never extend a temporary training permit more than one time. \_\_\_\_\_

Sec. 10. REFUSAL TO LICENSE AND REVOCATION OR SUSPENSION OF  
LICENSE - GROUNDS.

The Board may, in its discretion, refuse to issue a license to any applicant and may cancel, revoke or suspend the operation of any license by it granted, for any of the following reasons:

(1) The applicant or licensee is guilty of gross immorality.

(2) The applicant or licensee is unfit or incompetent by reason of negligence.

(3) The applicant or licensee is guilty of any fraud, deceit or misrepresentation in the fitting and dispensing hearing aids or in his seeking of a license under this Act.

(4) The applicant or licensee has been convicted of a felony or a misdemeanor which involved moral turpitude.

(5) The applicant or licensee is a habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having similar effects or had become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind.

(6) The applicant or licensee has violated any of the provisions of this Act. \_\_\_\_\_

(7) The licensee has knowingly, directly or indirectly employed, hired, procured, or induced a person not licensed to fit and dispense hearing aids in this state, to so fit and dispense hearing aids.

(8) The licensee aids or abets any person not duly licensed under this Act in the fitting or dispensing of hearing aids.

(9) The licensee lends, leases, rents, or in any other manner places his license at the disposal or in the service of any person not licensed to fit and dispense hearing aids in this state.

(10) The licensee <sup>knowingly</sup> used or caused or promoted the use of any advertising matter, promotional literature, guarantees, warranty, disseminated or published with misleading, deceiving or false information. It is the intention of the Legislature that the provisions of this Subsection (10) and the following Subsection (11) be interpreted insofar as possible to coincide with the orders and rules of the Federal Trade Commission on such subjects.

(11) The licensee advertised a particular model, type or kind of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type, or kind when it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than was advertised.

(12) The licensee represented that the service or advice of a person licensed to practice medicine by the Texas State Board of Medical Examiners is used or made available in the selection, fitting, adjustment, maintenance, or repair of a hearing aid when such representation was not true. \_\_\_\_\_

(13) The licensee used the term "doctor," "clinic" or any like words, abbreviations or symbols in the conduct of his business which would tend to connote that the licensee was a physician or surgeon.

(14) The licensee defamed another licensee under this Act by falsely imputing to him dishonorable conduct, inability to perform contracts, questionable credit standing, or any other false representation or falsely disparaging the products of such other licensee in any respect, or the business methods, selling prices, values, credit terms, policies, or services of such other licensee. -

q-7 (15) The licensee displayed competitive products in his place of business, or in the advertising in such manner as to falsely disparage them.

(16) The licensee quoted prices of competitive hearing aids or devices without disclosing that the prices were not the present, correct, current prices, or falsely showed, demonstrated or represented competitive hearing aids models as being the correct, current model of such hearing aids.

(17) The licensee imitated or simulated the trademark, tradename, brand, or label of another licensee under this Act with the intent to mislead or deceive purchasers or prospective purchasers.

(18) The licensee used in his advertising the name, model name or trademark of a particular manufacturer of hearing aids with the intent to falsely imply a relationship with such manufacturer that does not exist.

(19) The licensee obtained or attempted to obtain information concerning the business of another licensee under this Act by bribery, or attempting to bribe an employee or agent of such other licensee or by the impersonation of one in authority. \_\_\_\_\_

(20) The licensee directly or indirectly gave, or offered to give or permitted or caused to be given money or anything of value to any person who advises others in a professional capacity as an inducement to influence such person to influence those persons such person advises in a professional capacity to purchase or contract to purchase products sold or offered for sale by licensee or to refrain from purchasing or contracting to purchase products sold or offered for sale by any other licensee under this Act.

(21) The licensee falsely represented to a purchaser that a hearing aid was "custom-made," "made to order," "prescription-made" or any other representations that such hearing aid was specially fabricated for the purchaser.

(22) The licensee refused to accept responsibility for the acts of a temporary training permittee in a licensee's employ and under licensee's supervision.

(23) The licensee with fraudulent intent, engaged in the fitting and dispensing of hearing aids under a false name or alias.

(24) The licensee had failed to actively engage in the fitting and dispensing of hearing aids for a period of three consecutive years. \_\_\_\_\_

Sec. 11. PROCEDURE.

(a) Proceedings for revocation or suspension of a license shall be commenced by filing charges with the Board in writing and under oath. The charges may be made by any person or persons.

(b) The president of the Board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing to be served upon the applicant or licensee against whom charges have been filed at least 30 days prior thereto. Service of such charges and notice of hearing thereon may be given by certified mail to the last known address of such licensee or applicant. \_\_\_\_\_

(c) At the hearing, such applicant or licensee shall have the right to appear either personally or by counsel or both to produce witnesses, and to have subpoenas issued by the Board, *and cross-examine opposing or adverse witnesses.*

(d) The Board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings but the determination shall be founded upon sufficient legal evidence to sustain it.

(e) The Board shall determine the charges upon their merits. The Board shall enter an order in the permanent records of the Board setting forth the findings of the Board and its action thereon. A copy of such order of the Board shall be mailed to such applicant or licensee to his last known address by certified mail. -

(f) Any person whose license to fit and dispense hearing aids has been refused or has been cancelled, revoked or suspended by the Board, may, within 20 days after making and entering of such order, take an appeal to any district court of Travis County or any district court of the county of his residence.

(g) A case reviewed under the provisions of this section proceeds in such district court by trial de novo as that term is used and understood in appeals from justice of the peace courts to the county courts of this state. Appeal from the judgment of such district court will lie as other civil cases.

(h) Upon application, the Board may reissue a license to fit and dispense hearing aids to a person whose license has been cancelled or revoked but such application shall not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final, and such application shall be made in such manner and form as the Board may require.



Sec. 12. FEES AND EXPENSES.

8 10.00

(a) The Board shall charge a fee of ~~\$5.00~~ for issuing a temporary training permit, which fee must accompany the application for a temporary training permit.

(b) The Board shall charge a fee of \$25.00 for examining an applicant for a license, which fee must accompany the application.

(c) The Board shall charge a fee of \$50.00 for issuing a license.

(1) Any person making application for a license without an examination as provided in Sections 7 and 8 must submit such fee with such application.

(2) Every person passing the examination and meeting the requirements of the Board shall be notified that he is eligible for such license upon payment of the fee herein provided. Such notice shall be by certified mail at the address given on his examination papers. The fee for issuance of such license must be paid by the applicant within 90 days after having been notified. Failure to pay such fee within such time shall constitute a waiver of the right to such person to obtain his license.

(d) The Board shall charge a fee of \$5.00 for each duplicate license or duplicate temporary training permit.

(e) The Secretary-Treasurer of the Board shall, on or before the 10th day of each month, remit to the State Treasurer all of the fees collected by the Board during the preceding month for deposit in the general fund.

(f) The compensation and travel expenses allowance for members of the Board and its employees shall be provided in the General Appropriations Act. \_\_\_\_\_

(g) The number of days for which compensation may be paid to members of the Board shall not exceed two days in any calendar month except in those months in which examinations are held, but compensations may never be allowed to exceed six days in those months in which examinations are held.

(h) The Board may authorize all necessary disbursements to carry out the provisions of this Act, including payment of the premium on the bond of the Secretary-Treasurer, stationery expenses, purchase and maintain or rent equipment and facilities necessary to carry out the examinations of applications for license; pay for printing of all licenses; rent and furnish an office to maintain the permanent records of the Board.

(i) After the Act has been effective for a period of two years, the total appropriations to the Board shall never exceed the total amount received for all fees collected for the two-year period immediately prior to such appropriation. \_\_\_\_\_

¶ Sec. 13. RENEWAL OF LICENSE.

(a) On or before the first day of January of each year, every licensee under this Act shall pay to the Secretary-Treasurer of the Board an annual renewal fee of \$50.00 for the renewal of his license to fit and dispense hearing aids for the current year. On receipt of said renewal fee, the Board shall issue an annual renewal certificate bearing the number of his license, the year for which it is renewed and such other information from the records of the Board as the Board may deem necessary for the proper enforcement of this Act.

(b) When a licensee shall fail to pay his annual renewal fee by February 1st of each year, it shall be the duty of the Board to \_\_\_\_\_

notify such licensee by certified mail at his last known address that said annual renewal fee is due and unpaid; if the annual renewal fee is not paid within 60 days from the said date of mailing such notice, the Board shall then cancel said license.

(c) Fitting and dispensing hearing aids without an annual renewal certificate for the current year as provided herein shall have the same force and effect and be subject to the same penalties as fitting and dispensing hearing aids without a license.

③ ~~(d) After the Board shall have cancelled a license for nonpayment of the annual renewal fee, the Board may refuse to issue a new license until such fitter and dispenser of hearing aids has passed the regular examination for license as provided for by this Act.~~

(e) The Board shall issue a duplicate license to any licensee whose license has been lost or destroyed and the Board shall have the authority to prescribe the procedure and requirements for the issuance of the duplicate license. \_\_\_\_\_

Sec. 14. DUTY OF A LICENSEE.

(a) Every person engaged in the fitting and dispensing of hearing aids in this state shall display his license in a conspicuous place in his principal office and whenever required, exhibit such license to the Board or its authorized representatives.

(b) Every licensee shall deliver to each person supplied with a hearing aid, by the licensee or under his direction, a bill of sale which shall contain his signature, his printed name, the address of his principal office, the number of his license, a description of the make and model of the hearing aid furnished and the amount charged therefor, and whether the hearing aid is new, used or rebuilt. \_\_\_\_\_

(c) Such receipt as required in Subsection (b) of this section shall be accompanied by the following statement in no smaller type than the largest type used in the body portion of such receipt, to-wit:

"The purchaser has been advised at the outset of his relationship with the undersigned fitter and dispenser of hearing aids that any examination or representation made by a licensed fitter and dispenser of hearing aids in connection with the fitting and selling of this hearing aid is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice."

(d) Every licensee must, when dealing with a child 10 years of age or under, ascertain whether the child has been examined by an otolaryngologist for his recommendation within 90 days prior to the fitting. If such is not the case, a recommendation by the licensee to do so must be made and this fact noted on the bill of sale required in Subsection (b) of this Section. \_\_\_\_\_

Sec. 15. PROHIBITED ACTS.

(a) It is unlawful for any person to:

(1) Buy, sell, or fraudulently obtain a license to fit and dispense hearing aids or aid or abet therein;

(2) Alter a license to fit and dispense hearing aids with the intent to defraud;

(3) Willfully make a false statement in an application to the Texas Board of Examiners of Fitters and Dispensers of Hearing Aids for a license, a temporary training permit or for the renewal of a license;

(4) Falsely impersonate any person duly licensed as a fitter and dispenser of hearing aids under the provisions of this Act. \_\_\_\_\_

(5) Offer or hold himself out as authorized to fit and dispense hearing aids, or use in connection with his name any designation tending to imply that he is authorized to engage in the fitting and dispensing of hearing aids, if not so licensed under the provisions of this Act; or

(6) Engage in the fitting and dispensing of hearing aids during the time his license shall be cancelled, suspended or revoked.

(b) It is unlawful for any person not a licensed fitter and dispenser of hearing aids or holder of a temporary training permit provided in this Act, or a licensed physician or surgeon to do any one act or thing or any combination of acts or things named or described in Subsection (b) of Section 1 of this Act. \_\_\_\_\_

Sec. 16. PENALTY.

Whoever violates any provision of this Act shall be fined not less than \$100.00 nor more than \$500.00 or be confined in jail for a period of not more than 90 days, or both. ~~Each day of said violation shall be a separate offense.~~ \_\_\_\_\_

Sec. 17. TREATMENT OF EAR DEFECTS AND ADMINISTRATION OF DRUGS.

Nothing contained in this Act shall be construed to permit persons licensed under this Act to treat the ear for any defect whatsoever in any manner, nor to administer any drug or physical treatment whatsoever unless the licensee is a duly qualified physician and surgeon and licensed to practice by the Texas State Board of Medical Examiners. Nothing in this Act shall be construed to amend or modify the laws regulating the practice of medicine as defined by Article 4510, Revised Civil Statutes of Texas. \_\_\_\_\_

Sec. 18. EMPLOYMENT OF LICENSEE.

(a) Nothing in this Act shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business in this state from engaging in \_\_\_\_\_

the practice of fitting and dispensing hearing aids at retail or selling or offering for sale hearing aids at retail without a license, provided that it employs only persons licensed under this Act in the direct fitting and dispensing of such products, instruments or devices.

(b) Any person licensed under this Act who is employed by a corporation, partnership, trust, association or other like organization to sell and/or fit hearing aids shall supply the Board with the name and address of such employer at the time such licensee applies for an annual renewal of his license. \_\_\_\_\_

Sec. 19. EXCEPTIONS.

Nothing in this Act shall be construed to apply to the following:

(1) Persons engaged in the practice of measuring human hearing as a part of the academic curriculum of an accredited institution of higher learning.

(2) Persons engaged in the practice of measuring human hearing as a part of a program conducted by a nonprofit organization, provided such organization or its employees does not sell hearing aids.

(3) Physicians and surgeons duly licensed by the Texas State Board of Medical Examiners and qualified to practice in the State of Texas.

(4) Persons employed and directly supervised by a physician and surgeon to test or measure human hearing, provided such persons do not sell hearing aids. \_\_\_\_\_

Sec. 20. EXCEPTIONS FROM THE BASIC SCIENCE LAW.

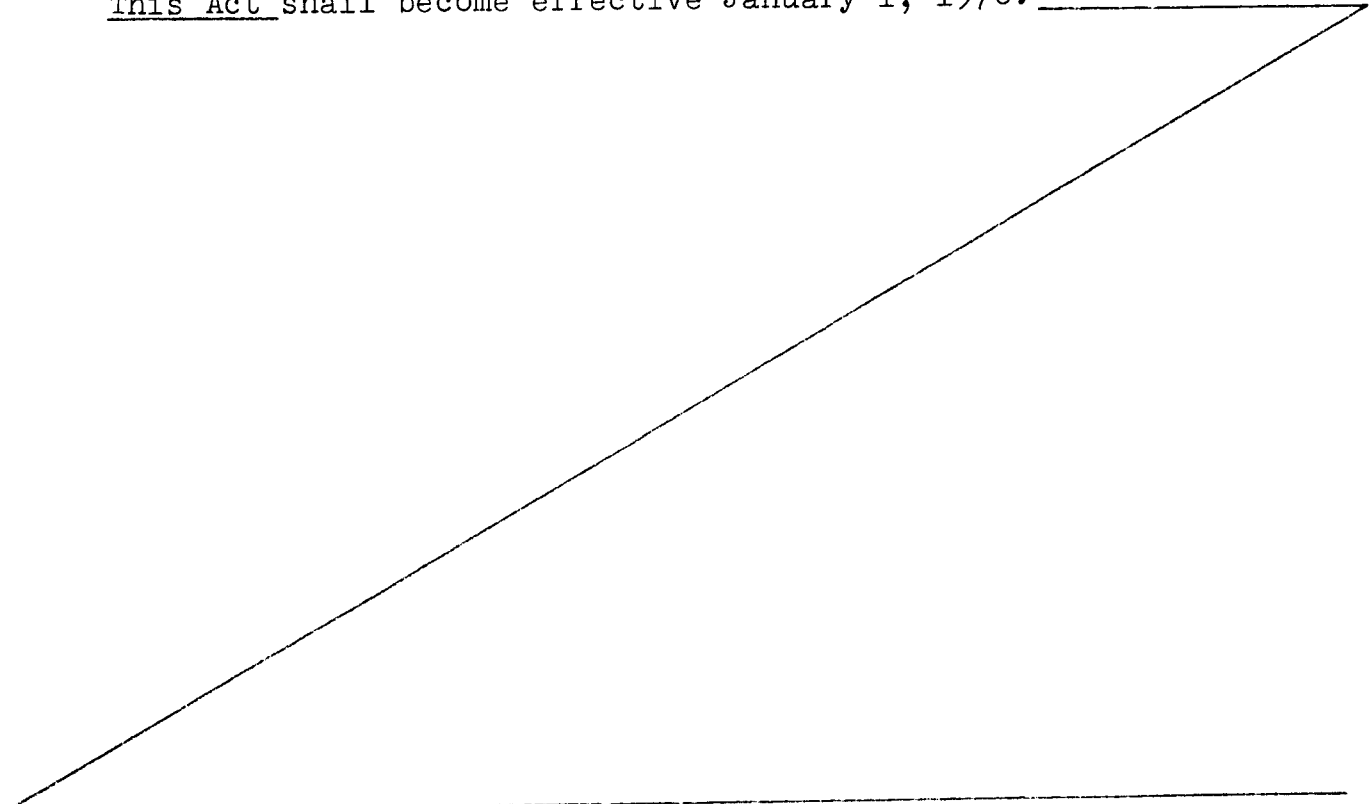
The provisions of Chapter 95, Acts of the 51st Legislature, Regular Session, 1949, as amended commonly referred to as the Basic Science Law do not apply to fitters and dispensers of hearing aids duly qualified and licensed under this Act who confine their activity to the fitting and dispensing of hearing aids. \_\_\_\_\_

Sec. 21. SEVERABILITY.

If any portion of this Act or the application thereof to any person, case or circumstance is held invalid, such invalidity shall not affect any other provision or application which can be given effect without the invalid provision or application, and to this end this provision of this Act is declared to be severable. \_\_\_\_\_

Sec. 22. EFFECTIVE DATE.

This Act shall become effective January 1, 1970. \_\_\_\_\_



FORM A

(For favorable and unfavorable reports on bills and resolutions, where no committee amendments are recommended.)

COMMITTEE REPORT

Date 5-14-69

HON. G. F. (GUS) MUTSCHER

Speaker of the House of Representatives.

Sir:

We, your Committee on Governmental Affairs & Efficiency to whom was referred S. B. No. 287, have had the same under consideration and beg to report back with recommendation that it { <sup>do</sup> ~~do not~~ } pass, and be printed

Don Carson  
Chairman.

(When this form is used for a favorable report on a general bill the words "do not" are marked out. If the bill is a local bill the word "not" should be inserted before the word "printed." When used for an unfavorable report the word "do" is marked out, the comma after "pass" is changed to a period, and the remaining words also marked out.

When this form is used for a simple or concurrent resolution the comma after "pass" should be changed to a period and the remaining words stricken out because resolutions are printed in the Journal when first introduced.)



BILL ANALYSIS

BACKGROUND:

There is presently no law regulating those who fit and sell hearing aids.

PURPOSE:

This bill will create a Board of Examiners in the Fitting and Dispensing of Hearing Aids.

SECTION BY SECTION ANALYSIS:

Section 1: Defines relevant terms.

Section 2: Creates a 9-member Board of Examiners in the Fitting and Dispensing of Hearing Aids. Members will be appointed by the governor for 6-year staggered terms. Six members must have the qualifications to fit and dispense hearing aids. One must be a layman. One must be a practicing physician who specialized in otolaryngology. One must be a practicing audiologist. No member of the board may have a financial interest in a hearing aid manufacturing company or a wholesale hearing aid company.

Section 3: Board shall meet at least twice a year, notice being given of such meetings. A quorum must be present.

Section 4: Lists the powers and duties of the board.

Section 5: An accurate record of all meetings shall be kept along with records of all applicants for examination. A record of all licenses issued will also be kept.

Section 6: Every person wishing to practice the fitting and dispensing of hearing aids must pass an examination given by the board. Applicant must be at least 21 years of age and a graduate of high school.

Section 7: Within 120 days of this bill's enactment, all persons in this line of work must be registered and will receive a license. Those who have been engaged in this work for 2 years prior to this bill's enactment, will not be required to take the examination.

Section 8: Licensees of other state will not take examination if other states requirements are at least equivalent to those in Texas.

Section 9: Temporary training permits will be issued to those who have never taken the exam and who wish to work for a license. Permits will be limited to 16 months.

Section 10: States the grounds on which the Board may refuse to issue a license or revoke a license.

Section 11: The Board will hear charges made by any person against a licensee and strict rules of procedure will not be used. Charges will be determined on their merits, and appeals made to a district court. A revoked license may be reissued after 6 months.

Section 12: Lists the fees to be charged:

\$25---examination  
\$ 5---for issuing training permit  
\$50---fee for issuing license  
\$ 5---for issuing duplicates

Revenue from such fees shall go into the general revenue fund and the Board's expenses shall be paid from the Legislative appropriation.

Section 13: License must be renewed annually .

Section 14: Licensee must display his license in a conspicuous place in his place of business. Each hearing aid sold must be accompanied by a bill of sale.

Section 15: Lists those practices which are prohibited.

Section 16: Provides penalties for violation of this act.

Section 17: States that this act is not intended to allow licensees to treat the ear for any defect or disease.

Section 18: Employees of company which fits hearing aid must be licensed if they are actively engaged in this practice.

Section 19: Provides exemptions.

Section 20: Provides that the provisions of the Basic Science law will not apply to licensees under this act.

Section 21: Severability Clause.

Section 22: Effective Date--January 1, 1970.

*Summary of Committee Action:*

*The Committee suspended all necessary rules and reported the bill back to the House with a favorable recommendation.*

①  
AMENDMENT NO. 1

BY Moyen

pg 11  
Amend subsection (c) of Section 9 of Senate Bill  
287 to delete the term "6 months" and substitute the  
term "one year."

MAY 21 1959

DATE \_\_\_\_\_

READ AND ADOPTED

Dorothy Hallman  
CHIEF CLERK  
HOUSE OF REPRESENTATIVES

②

AMENDMENT NO. 2

BY Mayer

pg 12  
✓

Amend subsection (10) of Section 10 of Senate Bill  
287 by adding the word "knowingly" immediately after the  
word "licensee" in the first line of said subsection.

DATE MAY 21 1969  
READ AND ADOPTED  
Dorothy J. Hallman  
CHIEF CLERK  
HOUSE OF REPRESENTATIVES

3  
AMENDMENT NO. 3

BY Mayer

Amend subsection (d) of Section 13 of Senate Bill  
287 to read as follows:

pg 18  
" (d) After the Board shall have cancelled a license for  
nonpayment of the annual renewal fee, the Board may re-  
fuse to issue a new license until such fitter and dis-  
penser of hearing aids has paid all previous unpaid  
annual fees. "

MAY 21 1969

DATE

READ AND ADOPTED

Pennington Hallman  
CHIEF CLERK  
HOUSE OF REPRESENTATIVES

AMENDMENT NO. 4

BY Mayer

Amend subsection (e) of Section 11 Senate Bill  
287 by substituting, therefore, the following:

④  
1915  
\* (e) The Board shall determine the charges upon their  
merits. The Board shall enter an order in the permanent  
records of the Board setting forth the findings of fact  
and law of the Board and its action thereon. A copy of  
such order of the Board shall be mailed to such applicant  
or licensee to his last known address by certified mail.\*

MAY 21 1969

DATE \_\_\_\_\_

READ AND ADOPTED

Dorothy Hallman

CHIEF CLERK  
HOUSE OF REPRESENTATIVES

AMENDMENT NO. 5

BY Mayer

Amend subsection (c) of Section 11 of Senate Bill  
287 by deleting the period and adding the following:  
"...and cross-examine opposing or adverse witnesses."

✓  
Pg 15-

MAY 21 1969

DATE

READ AND ADOPTED

Donna Friedman  
CHIEF CLERK  
HOUSE OF REPRESENTATIVES

(6)  
✓  
pg 16  
AMENDMENT NO. 6

BY Moyer

Amend subsection (a) of Section 12 of Senate Bill  
287 to delete the number \$5.00 and substitute, there-  
fore, the number \$10.00.

MAY 21 1969

DATE \_\_\_\_\_

READ AND ADOPTED

Frederick Hallman  
CHIEF CLERK  
HOUSE OF REPRESENTATIVES



AMENDMENT NO. 7

BY Meyen

Amend Senate Bill 287 by deleting subsection (b) of Section 6 and substituting, therefore, the following: **SB 287**

(b) The applicant shall make application, furnishing to the Secretary-Treasurer of the Board on forms to be furnished by the Board, sworn evidence that he has attained the age of 18 years, is of good moral character, is free of contagious or infectious disease, and has graduated from an accredited high school or equivalent, and such other information as the Board may deem necessary for the enforcement of this Act.

DATE MAY 21 1969

READ AND ADOPTED

Dorothy Hatten  
CHIEF CLERK  
HOUSE OF REPRESENTATIVES

(8)  
AMENDMENT NO. 8

BY Meyer

Amend Senate Bill 287 by deleting Section 7 and substituting, therefore, the following:

P  
page 8  
Sec. 7. LICENSE WITHOUT EXAMINATION.

Within 120 days after the effective date of this Act, and not thereafter, any person engaged in fitting and dispensing hearing aids on the effective date of this Act, shall be registered by the Board as passing the qualifications of this Act and shall receive from the Board a license to fit and dispense hearing aids in this state without taking the examination provided for in this Act upon presentation, in writing, by such person to the Secretary-Treasurer of the Board on forms to be furnished by the Board, sworn evidence that such person has attained the age of 18 years of age, is of good moral character, is free of contagious or infectious diseases and has been engaged in fitting and dispensing hearing aids in the United States of America for a period of at least <sup>one</sup> ~~two~~ year<sup>s</sup> immediately prior to the effective date of this Act.

MAY 21 1969

DATE

READ AND ADOPTED

Dorothy Hallman  
CHIEF CLERK  
HOUSE OF REPRESENTATIVES

8

②  
Pg 20 ✓  
AMENDMENT No. 9

BY Moyin  
No. 287

Amend Section 16 of Senate Bill by deleting the last sentence of said section.

MAY 21 1969

DATE \_\_\_\_\_

READ AND ADOPTED

Dorothy Hallman

CHIEF CLERK  
HOUSE OF REPRESENTATIVES

AN ACT

relating to the licensing of persons to fit and dispense hearing aids; relating to the creation, organization, powers, duties, and procedures of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids; defining the Fitting and Dispensing of Hearing Aids; providing certain prohibited acts; providing for examinations for applicants for license; providing for issuance of license without examination; providing for the issuance of temporary training permits; providing grounds for the refusal to license and the revocation and suspension of license; providing fees for examination, issuance of license and training permits; providing for renewal of license; providing duties of licensees; providing for penalties; prohibiting licensees to treat a person or to administer drugs; providing for the sale of hearing aids by persons licensed under this Act; providing persons excepted from the Act; providing licensees under this Act exempt from the provisions of Chapter 95, Acts of the 51st Legislature, Regular Session, 1949, as amended; providing for severability; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. DEFINITIONS.

In this Act, unless the context requires a different definition:

- (a) "Board" means the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.
- (b) "License" means license issued by the Board under this Act to person authorized to fit and dispense hearing aids.
- (c) "Temporary Training Permit" means a permit issued by the Board to persons authorized to fit and dispense hearing aids only under the supervision of a person who holds a license under this Act.

(d) "Hearing aid" means any instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing, but as used herein shall not mean repair services, replacements for defective parts and shall not include batteries, cords and accessories.

(e) "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. Provided, for the purpose of this Act, the term "sell" or "sale" shall not include sales at wholesale by manufacturers to persons licensed under this Act, or to distributors for distribution and sale to persons licensed under this Act.

(f) "Fitting and Dispensing hearing aids" means the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections, adaptations and/or sales of hearing aids. The term also includes the sale of hearing aids, and the making of impressions for earmolds to be used as a part of the hearing aid.

Sec. 2. BOARD OF EXAMINERS.

(a) The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is hereby created. The Board shall be composed of nine members with the following qualifications, to-wit:

(1) Six of such members shall possess the necessary qualifications to fit and dispense hearing aids in this state and have been residents of this state actually engaged in fitting and dispensing hearing aids for at least five years immediately preceding their appointment. No more than two of such six members shall be employed by, franchised by, or associated exclusively with the same hearing aid manufacturer;

(2) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale hearing aid company;

(3) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment, shall be an active practicing physician or surgeon duly licensed to practice in this state by the Texas State Board of Medical Examiners, and specialize in the practice of otolaryngology. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company; and

(4) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and shall be an active practicing audiologist. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company.

(b) One who has served two full consecutive terms on the Board shall not be eligible for a reappointment to the Board for a period of 12 months immediately following the expiration of the second full term.

(c) In the event of death, resignation or removal of any members; the vacancy of the unexpired terms shall be filled by the Governor in the same manner as other appointments. Each appointee to the Board shall, within 15 days from the date of his appointment, qualify by taking the constitutional oath of office. Upon presentation of such oath, the Secretary of State shall issue commissions to appointees as evidence of their authority to act as members of the Board.

(d) The members of the initial Board, to be appointed by the Governor to take office on the effective date of this Act, shall be divided into three classes, to-wit: Class One, Class Two, and Class Three, and their terms of office shall be determined by lot at the first meeting of the Board. The three Class One members shall hold office for two years; and the three Class Two members shall hold office for four years; and the three Class Three members shall hold office for six years respectively, from the time of their appointment. Biennially thereafter, the Governor shall appoint three members of the Board to hold office for a term of six years.

(e) The Board shall be represented by the Attorney General and the District and County Attorneys of the state.

Sec. 3. BOARD ORGANIZATION AND MEETINGS.

Within 60 days after their appointment and qualification the initial Board shall hold its first meeting and elect a President, Vice-President, and Secretary-Treasurer. The term of office for all officers of the Board shall be for a period of one year.

The Board shall hold regular meetings at least twice a year at which an examination of applicants for license shall be given. Not less than 30 days notice of such meeting shall be given by publication in at least three daily newspapers of general circulation to be selected by the Board. Written notice of such regular meetings of the Board shall be given to the members by the Secretary-Treasurer of the Board by certified mail not less than 30 days prior to the date of such regular meeting. Special meetings of the Board shall be held upon the written request of a majority of the members or upon the call of the President. Written notice of such special meetings of the Board shall be given to members by the Secretary-Treasurer of the Board by certified mail not less than 30 days prior to the date of the special meetings. A majority of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present provided such period shall not be longer than three successive days.

Section 4. POWERS AND DUTIES OF THE BOARD.

(a) The Board shall have the power to make such procedural rules consistent with this Act as may be necessary for the performance of its duties.

(b) The Board shall have the power to appoint committees from its own membership, the duties of which shall be to consider such matters, pertaining to the enforcement of this Act, as shall be referred to said committees, and they shall make recommendations to the Board in respect thereto.

(c) The Board shall have the power to employ the services of stenographers, inspectors, agents, attorneys, and other necessary assistants in carrying out the provisions of this Act.

(d) The Board, by majority vote, shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its jurisdiction.

(e) The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for injunction shall be in addition to any other action, proceeding or remedy authorized by law.

(f) The Board is charged with the duty of aiding in the enforcement of this Act, and any member of the Board may present to the Attorney General or a County or District Attorney of this state complaints relating to violations of any provision of this Act; and the Board through the members, officers, counsel, and agents may assist in the trial of any case involving alleged violations of this Act, subject to the control of the Attorney General, County Attorney, or District Attorney charged with the responsibility of prosecuting such case.



(g) Before entering upon the discharge of the duties of such office, the Secretary-Treasurer of the Board shall give such bond for the performance of this duty as the Board may require, the premium of such bond is to be paid from any available funds.

(h) The Board shall adopt an official seal and the form of a license of suitable design and shall have an office where all the permanent records shall be kept.

Sec. 5. RECORDS.

(a) The Board shall preserve an accurate record of all meetings and proceedings of the Board.

(b) A record shall be kept showing the name, age and present legal and mailing address of each applicant for examination. The record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained.

(c) The Secretary-Treasurer of the Board shall on or before March 1st of each year send a certified copy of such record to the Secretary of State for permanent record. A certified copy of said record with the hand and seal of the Secretary-Treasurer of the Board to the Secretary of State, shall be admitted as evidence in all courts.

(d) The Board shall keep a record of each license issued under this Act containing the name, residence, place of business of the person to whom each license has been issued, and the date of issuance of each of such license and all information pertaining to renewals, revocations and suspensions of such licensee.

Sec. 6. EXAMINATION: APPLICATION.

(a) Every person desiring to engage in fitting and dispensing hearing aids in the State of Texas shall be required to pass an examination given by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

(b) The applicant shall make application, furnishing to the Secretary-Treasurer of the Board on forms to be furnished by the Board, sworn evidence that he has attained the age of 18 years, is of good moral character, is free of contagious or infectious disease, and has graduated from an accredited high school or equivalent, and such other information as the Board may deem necessary for the enforcement of this Act.

(c) The examination shall consist of written, oral or practical tests in the following areas as they pertain to the fitting and dispensing of hearing aids, to-wit:

- (1) Basic physics of sound;
- (2) The structure and function of hearing aids;
- (3) Fitting of hearing aids;
- (4) Pure tone audiometry, including air conduction testing and bone conduction testing;
- (5) Live voice and/or record voice speech audiometry;
- (6) Masking when indicated;
- (7) Recording and evaluation of audiograms and speech audiometry to determine the hearing aid candidacy;
- (8) Selection and adaption of hearing aids and testing of hearing aids; and
- (9) Taking of earmold impressions.

(d) No part of the examination shall consist of tests requiring knowledge of the diagnosis and/or treatment of any disease or injury to the human body.

(e) Each applicant shall be given due notice of the date and place of the examination and the subjects, areas, and/or skills

that will be included within such examination, and there shall be no changes in said subjects, areas, and/or skills after the date of the examination has been announced and publicized nor shall there be more than one change or group of changes in any one calendar year. All examinations shall be conducted in writing and by such other means as the Board shall determine adequate to ascertain the qualifications of applicants. All applicants examined during a given calendar year shall be given the same examination. Every applicant successfully passing the examination and meeting all the requirements of this Act shall be registered by the Board as possessing the qualifications required by this Act and shall receive from the Board a license to fit and dispense hearing aids in this state.

Sec. 7. LICENSE WITHOUT EXAMINATION.

Within 120 days after the effective date of this Act, and not thereafter, any person engaged in fitting and dispensing hearing aids on the effective date of this Act, shall be registered by the Board as passing the qualifications of this Act and shall receive from the Board a license to fit and dispense hearing aids in this state without taking the examination provided for in this Act upon presentation, in writing, by such person to the Secretary-Treasurer of the Board on forms to be furnished by the Board, sworn evidence that such person has attained the age of 18 years of age, is of good moral character, is free of contagious or infectious diseases and has been engaged in fitting and dispensing hearing aids in the United States of America for a period of at least one year immediately prior to the effective date of this Act.

Sec. 8. RECIPROCAL ARRANGEMENTS.

(a) Upon proper application, the Texas Board of Examiners in Fitting and Dispensing of Hearing Aids shall grant a license to fit and dispense hearing aids without requiring an examination to licentiates of other states or territories having requirements equivalent to or higher than those in effect pursuant to this Act for fitting and dispensing hearing aids.

(b) Applications for license under the provisions of this section shall be in writing and upon a form prescribed by the Board. Such applications shall be filed with the Secretary-Treasurer of the Board. The application shall be accompanied by a license or a certified copy of a license to fit and dispense hearing aids, lawfully issued to the applicant by some other state or territory; and shall also be accompanied by an affidavit of the President or Secretary of the Board of Examiners in Fitting and Dispensing Hearing Aids who issued the license. The affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked, and that the statement of qualifications made in this application for license in Texas is true and correct.

(c) Applicants for a license under the provisions of this section shall subscribe to an oath in writing which shall be a part of said application, stating that the license, certificate or authority under which the applicant fits and dispenses hearing aids in the state or territory from which the applicant is removed, was at that time of such removal in full force and not suspended or cancelled; that the applicant is the identical person to whom the

said certificate or license was issued and that no proceeding was pending at the time of such removal, or at the present time pending against the applicant for the cancellation, suspension or revocation or such certificate or license in the state or territory in which the same was issued and that no prosecution was then or at the time of application pending against the applicant in any state or federal court for any offense under the laws of Texas which is a felony.

Sec. 9. TEMPORARY TRAINING PERMIT.

(a) The Board shall grant a temporary training permit to fit and dispense hearing aids to any person applying to the Board who has never taken the examination provided in the Act and who possesses the qualifications in Subsection (b) of Section 6, of this Act, upon written application to the Secretary-Treasurer of the Board, the applicant shall make application on forms to be furnished by the Board furnishing sworn evidence that he possesses the qualifications contained in Subsection (b), Section 6, of this Act, that he has never taken the examination provided in this Act, and that he has never previously been issued a temporary training permit to fit and dispense hearing aids by the Board.

(b) The application for a temporary permit shall be accompanied by the affidavit of a person duly licensed and qualified to fit and dispense hearing aids in this state. The accompanying affidavit shall state that the applicant, if granted a temporary training permit, will be supervised by the affiant in all work done by applicant under such temporary training permit, that affiant will notify the Board within 10 days following applicant's terminating of supervision by affiant.

(c) A temporary training permit shall authorize the holder thereof, to fit and dispense hearing aids for a period of one year or until the holder thereof shall have successfully passed the examination required for a license under this Act, whichever occurs first.

(d) A temporary training permit shall automatically become void at the end of the period of 6 months from the date of its issuance unless extended for an additional period not to exceed 6 months by the Board. The Board shall never extend a temporary training permit more than one time.

Sec. 10. REFUSAL TO LICENSE AND REVOCATION OR SUSPENSION OF  
LICENSE - GROUNDS.

The Board may, in its discretion, refuse to issue a license to any applicant and may cancel, revoke or suspend the operation of any license by it granted, for any of the following reasons:

(1) The applicant or licensee is guilty of gross immorality.

(2) The applicant or licensee is unfit or incompetent by reason of negligence.

(3) The applicant or licensee is guilty of any fraud, deceit or misrepresentation in the fitting and dispensing hearing aids or in his seeking of a license under this Act.

(4) The applicant or licensee has been convicted of a felony or a misdemeanor which involved moral turpitude.

(5) The applicant or licensee is a habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having similar effects or had become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind.

(6) The applicant or licensee has violated any of the provisions of this Act.

(7) The licensee has knowingly, directly or indirectly employed, hired, procured, or induced a person not licensed to fit and dispense hearing aids in this state, to so fit and dispense hearing aids.

(8) The licensee aids or abets any person not duly licensed under this Act in the fitting or dispensing of hearing aids.

(9) The licensee lends, leases, rents, or in any other manner places his license at the disposal or in the service of any person not licensed to fit and dispense hearing aids in this state.

(10) The licensee knowingly used or caused or promoted the use of any advertising matter, promotional literature, guarantees, warranty, disseminated or published with misleading, deceiving or false information. It is the intention of the Legislature that the provisions of this Subsection (10) and the following Subsection (11) be interpreted insofar as possible to coincide with the orders and rules of the Federal Trade Commission on such subjects.

(11) The licensee advertised a particular model, type or kind of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type, or kind when it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than was advertised.

(12) The licensee represented that the service or advice of a person licensed to practice medicine by the Texas State Board of Medical Examiners is used or made available in the selection, fitting, adjustment, maintenance, or repair of a hearing aid when such representation was not true.

(13) The licensee used the term "doctor," "clinic" or any like words, abbreviations or symbols in the conduct of his business which would tend to connote that the licensee was a physician or surgeon.

(14) The licensee defamed another licensee under this Act by falsely imputing to him dishonorable conduct, inability to perform contracts, questionable credit standing, or any other false representation or falsely disparaging the products of such other licensee in any respect, or the business methods, selling prices, values, credit terms, policies, or services of such other licensee.

(15) The licensee displayed competitive products in his place of business, or in the advertising in such manner as to falsely disparage them.

(16) The licensee quoted prices of competitive hearing aids or devices without disclosing that the prices were not the present, correct, current prices, or falsely showed, demonstrated or represented competitive hearing aids models as being the correct, current model of such hearing aids.

(17) The licensee imitated or simulated the trademark, tradename, brand, or label of another licensee under this Act with the intent to mislead or deceive purchasers or prospective purchasers.

(18) The licensee used in his advertising the name, model name or trademark of a particular manufacturer of hearing aids with the intent to falsely imply a relationship with such manufacturer that does not exist.

(19) The licensee obtained or attempted to obtain information concerning the business of another licensee under this Act by bribery, or attempting to bribe an employee or agent of such other licensee or by the impersonation of one in authority.



(20) The licensee directly or indirectly gave, or offered to give or permitted or caused to be given money or anything of value to any person who advises others in a professional capacity as an inducement to influence such person to influence those persons such person advises in a professional capacity to purchase or contract to purchase products sold or offered for sale by licensee or to refrain from purchasing or contracting to purchase products sold or offered for sale by any other licensee under this Act.

(21) The licensee falsely represented to a purchaser that a hearing aid was "custom-made," "made to order," "prescription-made" or any other representations that such hearing aid was specially fabricated for the purchaser.

(22) The licensee refused to accept responsibility for the acts of a temporary training permittee in a licensee's employ and under licensee's supervision.

(23) The licensee with fraudulent intent, engaged in the fitting and dispensing of hearing aids under a false name or alias.

(24) The licensee had failed to actively engage in the fitting and dispensing of hearing aids for a period of three consecutive years.

Sec. 11. PROCEDURE.

(a) Proceedings for revocation or suspension of a license shall be commenced by filing charges with the Board in writing and under oath. The charges may be made by any person or persons.

(b) The president of the Board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing to be served upon the applicant or licensee against whom charges have been filed at least 30 days prior thereto. Service of such charges and notice of hearing thereon may be given by certified mail to the last known address of such licensee or applicant.

(c) At the hearing, such applicant or licensee shall have the right to appear either personally or by counsel or both to produce witnesses, and to have subpoenas issued by the Board and cross-examine opposing or adverse witnesses.

(d) The Board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings but the determination shall be founded upon sufficient legal evidence to sustain it.

(e) The Board shall determine the charges upon their merits. The Board shall enter an order in the permanent records of the Board setting forth the findings of fact and law of the Board and its action thereon. A copy of such order of the Board shall be mailed to such applicant or licensee to his last known address by certified mail.

(f) Any person whose license to fit and dispense hearing aids has been refused or has been cancelled, revoked or suspended by the Board, may, within 20 days after making and entering of such order, take an appeal to any district court of Travis County or any district court of the county of his residence.

(g) A case reviewed under the provisions of this section proceeds in such district court by trial de novo as that term is used and understood in appeals from justice of the peace courts to the county courts of this state. Appeal from the judgment of such district court will lie as other civil cases.

(h) Upon application, the Board may reissue a license to fit and dispense hearing aids to a person whose license has been cancelled or revoked but such application shall not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final, and such application shall be made in such manner and form as the Board may require.

Sec. 12. FEES AND EXPENSES.

(a) The Board shall charge a fee of \$10.00 for issuing a temporary training permit, which fee must accompany the application for a temporary training permit.

(b) The Board shall charge a fee of \$25.00 for examining an applicant for a license, which fee must accompany the application.

(c) The Board shall charge a fee of \$50.00 for issuing a license.

(1) Any person making application for a license without an examination as provided in Sections 7 and 8 must submit such fee with such application.

(2) Every person passing the examination and meeting the requirements of the Board shall be notified that he is eligible for such license upon payment of the fee herein provided. Such notice shall be by certified mail at the address given on his examination papers. The fee for issuance of such license must be paid by the applicant within 90 days after having been notified. Failure to pay such fee within such time shall constitute a waiver of the right to such person to obtain his license.

(d) The Board shall charge a fee of \$5.00 for each duplicate license or duplicate temporary training permit.

(e) The Secretary-Treasurer of the Board shall, on or before the 10th day of each month, remit to the State Treasurer all of the fees collected by the Board during the preceding month for deposit in the general fund.

(f) The compensation and travel expenses allowance for members of the Board and its employees shall be provided in the General Appropriations Act.

(g) The number of days for which compensation may be paid to members of the Board shall not exceed two days in any calendar month except in those months in which examinations are held, but compensations may never be allowed to exceed six days in those months in which examinations are held.

(h) The Board may authorize all necessary disbursements to carry out the provisions of this Act, including payment of the premium on the bond of the Secretary-Treasurer, stationery expenses, purchase and maintain or rent equipment and facilities necessary to carry out the examinations of applications for license; pay for printing of all licenses; rent and furnish an office to maintain the permanent records of the Board.

(i) After the Act has been effective for a period of two years, the total appropriations to the Board shall never exceed the total amount received for all fees collected for the two-year period immediately prior to such appropriation.

Sec. 13. RENEWAL OF LICENSE.

(a) On or before the first day of January of each year, every licensee under this Act shall pay to the Secretary-Treasurer of the Board an annual renewal fee of \$50.00 for the renewal of his license to fit and dispense hearing aids for the current year. On receipt of said renewal fee, the Board shall issue an annual renewal certificate bearing the number of his license, the year for which it is renewed and such other information from the records of the Board as the Board may deem necessary for the proper enforcement of this Act.

(b) When a licensee shall fail to pay his annual renewal fee by February 1st of each year, it shall be the duty of the Board to

notify such licensee by certified mail at his last known address that said annual renewal fee is due and unpaid; if the annual renewal fee is not paid within 60 days from the said date of mailing such notice, the Board shall then cancel said license.

(c) Fitting and dispensing hearing aids without an annual renewal certificate for the current year as provided herein shall have the same force and effect and be subject to the same penalties as fitting and dispensing hearing aids without a license.

(d) After the Board shall have cancelled a license for nonpayment of the annual renewal fee, the Board may refuse to issue a new license until such fitter and dispenser of hearing aids has paid all previous unpaid annual fees.

(e) The Board shall issue a duplicate license to any licensee whose license has been lost or destroyed and the Board shall have the authority to prescribe the procedure and requirements for the issuance of the duplicate license.

Sec. 14. DUTY OF A LICENSEE.

(a) Every person engaged in the fitting and dispensing of hearing aids in this state shall display his license in a conspicuous place in his principal office and whenever required, exhibit such license to the Board or its authorized representatives.

(b) Every licensee shall deliver to each person supplied with a hearing aid, by the licensee or under his direction, a bill of sale which shall contain his signature, his printed name, the address of his principal office, the number of his license, a description of the make and model of the hearing aid furnished and the amount charged therefor, and whether the hearing aid is new, used or rebuilt.

(c) Such receipt as required in Subsection (b) of this section shall be accompanied by the following statement in no smaller type than the largest type used in the body portion of such receipt, to-wit:

"The purchaser has been advised at the outset of his relationship with the undersigned fitter and dispenser of hearing aids that any examination or representation made by a licensed fitter and dispenser of hearing aids in connection with the fitting and selling of this hearing aid is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice."

(d) Every licensee must, when dealing with a child 10 years of age or under, ascertain whether the child has been examined by an otolaryngologist for his recommendation within 90 days prior to the fitting. If such is not the case, a recommendation by the licensee to do so must be made and this fact noted on the bill of sale required in Subsection (b) of this Section.

Sec. 15. PROHIBITED ACTS.

(a) It is unlawful for any person to:

(1) Buy, sell, or fraudulently obtain a license to fit and dispense hearing aids or aid or abet therein;

(2) Alter a license to fit and dispense hearing aids with the intent to defraud;

(3) Willfully make a false statement in an application to the Texas Board of Examiners of Fitters and Dispensers of Hearing Aids for a license, a temporary training permit or for the renewal of a license;

(4) Falsely impersonate any person duly licensed as a fitter and dispenser of hearing aids under the provisions of this Act.

(5) Offer or hold himself out as authorized to fit and dispense hearing aids, or use in connection with his name any designation tending to imply that he is authorized to engage in the fitting and dispensing of hearing aids, if not so licensed under the provisions of this Act; or

(6) Engage in the fitting and dispensing of hearing aids during the time his license shall be cancelled, suspended or revoked.

(b) It is unlawful for any person not a licensed fitter and dispenser of hearing aids or holder of a temporary training permit provided in this Act, or a licensed physician or surgeon to do any one act or thing or any combination of acts or things named or described in Subsection (b) of Section 1 of this Act.

Sec. 16. PENALTY.

Whoever violates any provision of this Act shall be fined not less than \$100.00 nor more than \$500.00 or be confined in jail for a period of not more than 90 days, or both.

Sec. 17. TREATMENT OF EAR DEFECTS AND ADMINISTRATION OF DRUGS.

Nothing contained in this Act shall be construed to permit persons licensed under this Act to treat the ear for any defect whatsoever in any manner, nor to administer any drug or physical treatment whatsoever unless the licensee is a duly qualified physician and surgeon and licensed to practice by the Texas State Board of Medical Examiners. Nothing in this Act shall be construed to amend or modify the laws regulating the practice of medicine as defined by Article 4510, Revised Civil Statutes of Texas.

Sec. 18. EMPLOYMENT OF LICENSEE.

(a) Nothing in this Act shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business in this state from engaging in

the practice of fitting and dispensing hearing aids at retail or selling or offering for sale hearing aids at retail without a license, provided that it employs only persons licensed under this Act in the direct fitting and dispensing of such products, instruments or devices.

(b) Any person licensed under this Act who is employed by a corporation, partnership, trust, association or other like organization to sell and/or fit hearing aids shall supply the Board with the name and address of such employer at the time such licensee applies for an annual renewal of his license.

Sec. 19. EXCEPTIONS.

Nothing in this Act shall be construed to apply to the following:

(1) Persons engaged in the practice of measuring human hearing as a part of the academic curriculum of an accredited institution of higher learning.

(2) Persons engaged in the practice of measuring human hearing as a part of a program conducted by a nonprofit organization, provided such organization or its employees does not sell hearing aids.

(3) Physicians and surgeons duly licensed by the Texas State Board of Medical Examiners and qualified to practice in the State of Texas.

(4) Persons employed and directly supervised by a physician and surgeon to test or measure human hearing, provided such persons do not sell hearing aids.

Sec. 20. EXCEPTIONS FROM THE BASIC SCIENCE LAW.

The provisions of Chapter 95, Acts of the 51st Legislature, Regular Session, 1949, as amended commonly referred to as the Basic Science Law do not apply to fitters and dispensers of hearing aids duly qualified and licensed under this Act who confine their activity to the fitting and dispensing of hearing aids.



Sec. 21. SEVERABILITY.

If any portion of this Act or the application thereof to any person, case or circumstance is held invalid, such invalidity shall not affect any other provision or application which can be given effect without the invalid provision or application, and to this end this provision of this Act is declared to be severable.

Sec. 22. EFFECTIVE DATE.

This Act shall become effective January 1, 1970.

S. B. No. 287

\_\_\_\_\_  
Lieutenant Governor

\_\_\_\_\_  
Speaker of the House

I hereby certify that S. B. No. 287 passed the Senate on May 6, 1969, by a viva voce vote; May 21, 1969, Senate concurred in House amendments by a viva voce vote.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S. B. No. 287 passed the House on May 21, 1969, with amendments, by a non-record vote.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

5-29-69

Date

Signed

Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
2:10 P.M. O'CLOCK

MAY 29 1969

\_\_\_\_\_  
Secretary of State

S.B. No. 287 By Hightower, Mauzy

A BILL TO BE ENTITLED:

AN ACT, Relating to the licensing of persons who fit and dispense hearing aids; and declaring an emergency.

2-24-69 Filed with the Secretary of the Senate

2-25-69 Read, referred to Committee on Public Health

Reported favorably.

APR 30 1969 Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed.

MAY 6 1969 Senate and Constitutional Rules to permit consideration suspended by  
unanimous consent.  
\_\_\_\_\_ years, \_\_\_\_\_ days.

To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of \_\_\_\_\_ years, \_\_\_\_\_ days.

MAY 6 1969 Read second time and <sup>amended</sup> { ordered engrossed.  
~~passed to third reading.~~

MAY 6 1969 Caption ordered amended to conform to body of bill.

MAY 6 1969 Senate and Constitutional 3-Day Rules suspended by vote of  
31 years, 0 days to place bill on third reading and final passage.

MAY 6 1969 Read third time and passed by { a viva-voce vote.  
\_\_\_\_\_ years, \_\_\_\_\_ days.

OTHER ACTION:

Charles Schnabel  
Secretary of the Senate

5-6-69 Engrossed.

MAY 7 1969 Sent to HOUSE

Ernie McGinnis  
ENGROSSING CLERK

MAY 7 1969

Received from  
the Senate.

S.B. - 287

Dorothy Hallman

Chief Clerk, House of Representatives

READ 1st TIME

AND REFERRED TO COMMITTEE ON

Governmental Affairs &

Efficiency

MAY 7 1969

Dorothy Hallman

Chief Clerk, House of Representatives

*Printing Error  
suspended to  
take up & consider  
S.B. No. 287 -  
motion previously  
by non recorded*

Dorothy Hallman

Chief Clerk, House of Representatives

MAY 14 1969 REPORTED FAVORABLY SENT TO PRINTER

MAY 21 1969

Read Second Time and passed to  
third reading by vote 129 8

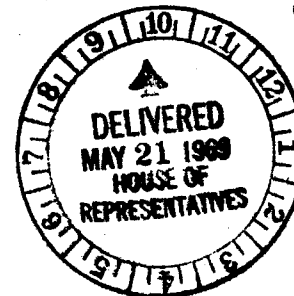
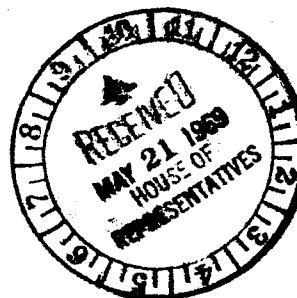
Dorothy Hallman

Chief Clerk, House of Representatives

MAY 21 1969

Constitutional  
Rule requiring bills to be read on  
three several days suspended by  
A four-fifths vote.

Yea 129 Nays 8



PRINTED, DISTRIBUTED AND

REFERRED TO COMMITTEE ON

RULES \_\_\_\_\_ M. \_\_\_\_\_ (Date)

Dorothy Hallman

Chief Clerk, House of Representatives

MAY 21 1969

Read third time

and Passed

by following vote

Yea

*Yea*  
*Record Vote*

*Dorothy Hallman*  
Chief Clerk  
HOUSE OF REPRESENTATIVES

MAY 21 1969

RETURNED

FROM HOUSE

*with amendments*

MAY 21 1969

Senate concurred in House amendments by viva voce vote.

MAY 21 1969

MOTION TO RECONSIDER THE VOTE BY WHICH *H.R. 287* WAS

ADOPTED / PASSED AND TO TABLE THE MOTION TO RECONSIDER PREVAILED PASSED BY A *non-record* VOTE OF

*Dorothy Hallman*  
CHIEF CLERK HOUSE OF REPRESENTATIVES

MAY 21 1969

Unanimous consent granted to amend caption of House Bill No. *287* to conform to body of bill.

*Dorothy Hallman*

(Chief Clerk, House of Representatives)

MAY 21 1969 RETURNED TO SENATE